

RESOLUTION NO. 20-99

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Professional Services Contract With Lexington Planning LLC To Prepare Objective Design And Development Standards In An Amount Not To Exceed \$160,000

WHEREAS, in 2017, the State legislature passed, and the Governor signed, a set of statutes intended to speed up affordable housing production, including SB 35 and SB 2; and

WHEREAS, SB 35 allows developers to request non-discretionary, ministerial approval of housing projects that meet objective planning standards; and

WHEREAS, SB 2 established a \$75 transaction recording fee and allocated half of the resulting revenue to local governments to update planning documents to streamline housing production; and

WHEREAS, on November 5, 2019, the City Council adopted Resolution No. 19-147, authorizing the City Manager to apply for and receive SB 2 Planning Grants Program funds to develop Objective Design and Development Standards and to execute a funding agreement with the State Department of Housing and Community Development (HCD), and appropriating the funds to the Grant Fund (Fund 254) if approved by HCD; and

WHEREAS, HCD notified the City of a grant award of \$160,000 on February 14, 2020 and executed the grant agreement on March 12, 2020; and

WHEREAS, in order to prepare the Objective Design and Development Standards, the City requires professional services; and

WHEREAS, on June 4, 2020, the City issued a Request for Proposals ("RFP") for professional services to prepare Objective Design and Development Standards, and four teams submitted proposals in response to the RFP on or before the required submittal deadline of July 10, 2020; and

WHEREAS, City planning staff reviewed and scored the proposals based on scoring criteria set forth in the RFP; and

WHEREAS, based on the results of the review of responses to the RFP, Lexington Planning LLC ("Contractor") was determined to be the most qualified for award of a contract to provide professional services to prepare Objective Design and Development Standards; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Professional Services Contract between the City of Emeryville and Lexington Planning LLC, in substantial form as attached as Exhibit A to this Resolution, with a term from September 16, 2020 to December 31, 2022; and be it further

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Lexington Planning LLC Professional Services Contract for Objective Standards
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RESOLVED, that the City Council authorizes the City Manager to execute amendments to the Professional Services Contract with Lexington Planning LLC not involving additional compensation, as may be necessary to ensure completion of the Objective Design and Development Standards for the City.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, September 15, 2020 by the following vote:

AYES:	5	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:

Christian R. Patz

49BC4DC144904C0...

MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

FB7B5D8EAB6A4BE...

CITY CLERK

APPROVED AS TO FORM:

Michael Guindon

CITY ATTORNEY

ATTACHMENTS

- Exhibit A, Professional Services Contract with Lexington Planning LLC



City of Emeryville
CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of this _____ day of _____, 2020 (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **LEXINGTON PLANNING LLC** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for Objective Development Standards; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

WHEREAS, the City has determined that the Contractor is qualified by training and experience to render such services; and

WHEREAS, the Contractor desires to provide such services; and,

WHEREAS, the public interest will be served by this Contract; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 Services

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **DECEMBER 31, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

REV 06/2020

Exhibit A

2. WORK CHANGES

2.1 *City Rights to Change*

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 *Additional Work Changes*

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

2.3 *City Manager Execution*

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 *Compensation for Services Performed*

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

3.2 *Total Compensation Amount*

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED SIXTY THOUSAND DOLLARS AND NO CENTS (\$160,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 *Assignment of Contract*

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 *Responsibility of Contractor and Indemnification of City*

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, State of California, and Department of Housing and Community Development ("Department") and their respective members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 *Independent Contractor*

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services;

hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 Insurance

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings or litigation relevant to this Contract shall be retained for five years or until such audit findings or litigation have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City or State of California may deem necessary, there shall be made available to the City or State of California for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City or State of California to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all

matters covered by this Contract. The City and the State of California shall have the right to interview employees.

4.6 Conflicts of Interest

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

4.7 Confidentiality

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

4.9 Licenses, Certifications and Permits

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

The Project Manager is necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a

material breach of Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements

4.13.1 Compliance

At the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

4.13.2 Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.69 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works

project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

5. TERMINATION

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

7. ENTIRE AGREEMENT

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Jean Eisberg** for the City and **Diana Keena** for the Contractor:

CITY	CONTRACTOR
Diana Keena, Associate Planner Phone No: 510-596-4335 E-Mail : dkeena@emeryville.org	Jean Eisberg, Principal Phone No: 415-516-4479 E-Mail : jean@lexingtonplanning.com

12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

CITY	CONTRACTOR
Charles S. Bryant 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4361 E-Mail : cbryant@emeryville.org <i>with a copy to:</i> Diana Keena, Associate Planner 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4335 E-Mail : dkeena@emeryville.org	Jean Eisberg, Principal 2083 Vine Street Berkeley CA 94709 Phone No: 415-516-4479 E-Mail : jean@lexingtonplanning.com

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

17. WAIVER

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

18. OTHER REQUIREMENTS, INCLUDING FEDERAL OR STATE REQUIREMENTS, IF APPLICABLE

If any of the boxes are checked below, this Contract is subject to the requirements as set forth in **Exhibit C**:

- ☒ Compliance with terms and conditions set forth in **Exhibit C** is required for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("**Other Requirements**") when attached hereto and incorporated by reference. With respect to any conflict between such Other Requirements, and the terms of this Contract and/or provisions of state law, **Exhibit C** shall control.
- ☐ FEMA financial assistance will be used to fund all or a portion of this contract. If FEMA financial assistance will be used to fund any portion of this Contract, the Contractor shall comply with all federal requirements including, but not limited to, the following: 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and Federal Contract Provisions attached hereto as **Exhibit C** and incorporated herein by reference. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions. With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract
REV 06/2020

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
Andrea Visveshwara
AD9DE6E6283E4B7...

Dated:

_____, 2020

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

8/26/2020, 2020

LEXINGTON PLANNING LLC

DocuSigned by:
Jean Eisberg, Manager (Signature)
B0981FB36DE14EA...

ATTACHMENT A.

SCOPE OF WORK

Lexington Planning (LEX) and Urban Field Studio (UFS) will complete the following tasks, with the assistance of City staff (City), as indicated below.

1. Adopted Policy Review (LEX, UFS). Review adopted regulations that pertain to multifamily residential and residential mixed-use projects, including standards and guidelines in the General Plan, five sub-district plans, Citywide Design Guidelines, and Title 9. Review other Municipal Code subsections (i.e., Public Works' sidewalk/curb standards), as directed by City staff. LEX will focus on any subjective criteria related to development regulations, parking, and performance standards. UFS will focus on building design guidelines and standards, and the interface with the public realm. Consultants will prepare a redlined and annotated version of existing regulations (in PDF and spreadsheet formats) that identify subjective standards/guidelines. These annotations and spreadsheets will be reviewed with City staff to identify priorities, goals, and methods for revisions.

Deliverables: Annotated and Redlined Guidelines and Regulations (PDF and Spreadsheet)

2. Stakeholder Meetings (LEX, UFS, City). Consultants will interview City Planning Division staff to understand how staff use the existing policy and planning documents; how the existing standards and guidelines are or are not achieving quality designs; standards/guidelines that require additional interpretation or that are frequently missed or misunderstood by applicants. Consultants will conduct two additional interviews with recent project sponsors (developers or architects) with multifamily or residential mixed-use applications. Although not required by the RFP, we recommend this brief set of interviews to verify our findings and direction for next steps. We ask for the City's assistance in setting up these meetings via videoconference. Based on the outcomes and feedback from these meetings, consultants will summarize key issues and develop an outline for the issues and options memo in Task 3.

Meetings: 3 total (1 with Planning Division, 2 with recent applicants)

Deliverables: Summary of Key Issues Identified

3. Issues & Options Memo (LEX, UFS). Based on the document review in Task 1 and preliminary feedback from City staff and recent applicants in Task 2, consultants will prepare a memo outlining the key issues and options for translating subjective guidelines. The memo will highlight areas of subjectivity in the existing code and identify options and recommendations for how and where to revise existing regulations. The memo will evaluate how standards may be clarified with diagrams, graphics, images, and maps, as needed, to show where and how new standards apply. The team will identify ways to write objective standards that define high quality

housing and support a livable public realm. This memo will be discussed and revised with City staff and then presented to decision-makers in Task 4.

Deliverables: Issues & Options Memo

4. Study Sessions (2 Planning Commission; 2 City Council) (LEX, UFS). Work with the Planning Commission and City Council over two meetings with each body (or in two joint meetings). Confirm key issues, prioritize standards and design guidelines for modifications, and review the draft ordinance changes.

- Meeting 1: Project overview; review Issues & Options Memo from Task 3; listen to feedback: what is and is not working in their current project review; what are their priorities for standards to revise and goals for project design.
- Meeting 2: Review and feedback on draft ordinance components and preliminary graphics.

Meetings: 4 total (or 2 joint)

Deliverables: Presentation Materials

5. Site Testing (UFS). Test development and design standards on three opportunity sites (likely a small, medium, and large site). Testing is intended to illustrate proposed draft standards and ensure that draft standards enable the City's desired development and design typologies. While the tests are limited to what can physically fit, the constructability and market feasibility of projects will also be considered. UFS may use a combination of precedent photographs, diagrams, sketches, and three-dimensional computer models to describe the application of standards. Findings from site tests will be used to determine recommendations for zoning changes in Task 6.

Deliverables: 3D Models, Diagrams, Graphics, and Precedent Images

6. Draft Ordinance (LEX, UFS). Prepare redline changes and new or modified standards for Title 9 and/or a stand-alone document. Revise existing subjective guidelines into objective standards and add objective standards for new topics, such as materials and street trees. Identify applicability by use and location, as appropriate. UFS will prepare diagrammatic graphics to complement existing and/or new text standards. An administrative draft will be prepared for staff review. An initial public review draft will be prepared for Planning Commission and City Council review. A second public review draft will be prepared for adoption hearings and a final draft for publication.

Deliverables: Draft Ordinance/Design Document (Administrative Draft, Public Review Drafts (2), Final Adopted)

7. Objective Standards Checklist (LEX, UFS). Develop a design standards and guidelines checklist for development proposals to assist applicants and City staff with

requirements for multifamily and mixed-use residential projects. Rather than repeat adopted standards verbatim, this checklist would be the form of one or more handouts (not subject to adoption) that would cross-reference where to find objective standards in the Zoning Ordinance or other locations.

Deliverables: Draft and Final Checklists

8. SB35 Checklists (LEX). Prepare two SB35 checklists: (1) Eligibility checklist, drawn from State law; (2) submittal requirements. The submittal requirements and any public notification requirements should be codified in the Zoning Ordinance, or cross-referenced if adopted by resolution. Although not specifically requested in the RPF, this provides an opportunity for the City to make clear the submittal requirements for streamlined projects.

Deliverables: Eligibility Checklist and Submittal Requirements Checklist

9. Adoption Hearings (2 Planning Commission; 2 City Council) (LEX, UFS). Present draft ordinance and related materials over two meetings with the Planning Commission and two meetings with the City Council (first and second readings).

Meetings: 4 total

Deliverables: Presentation Materials, CEQA findings

FEE

Work would be charged on a time and materials basis for labor and reimbursable expenses (e.g., GIS needs, printing). A budget estimate of \$155,320 is provided in Table 1. This leaves a 3% contingency available for any changes to the scope of work.

Table 1: Fee Estimate, By Task

Emeryville Scope and Budget		LEX		UFS		Project Total
		Hours	@\$170/hr	Hours	@\$195/hr	
Task 1	Adopted Policy Review	50	\$8,500	40	\$7,800	\$16,300
Task 2	Stakeholder Meetings	20	\$3,400	20	\$3,900	\$7,300
Task 3	Issues and Options Memo	90	\$15,300	70	\$13,650	\$28,950
Task 4	Study Session (4)	60	\$10,200	40	\$7,800	\$18,000
Task 5	Site Testing	10	\$1,700	110	\$21,450	\$23,150
Task 6	Draft Ordinance	110	\$18,700	80	\$15,600	\$34,300
Task 7	Objective Standards Checklist	16	\$2,720	20	\$3,900	\$6,620
Task 8	SB35 Checklists	10	\$1,700	0	\$0	\$1,700
Task 9	Adoption Hearings (4)	60	\$10,200	40	\$7,800	\$18,000
Expenses			\$1,000			\$1,000
	Project Total		\$73,420		\$81,900	\$155,320
	Project Budget					\$160,000
	Contingency (15%)					\$4,680

TIMELINE

A 13-month timeline for completion is outlined below, based on an October 1, 2020 notice to proceed.

Table 2: Project Timeline

Tasks	Timing
Notice to Proceed	October 2020
Task 1 Adopted Policy Review	December 2020
Task 2 Stakeholder Meetings	November 2020
Task 3 Issues and Options Memo	February 2021
Task 4 Study Session (4)	March-June 2021
Task 5 Site Testing	March-June 2021
Task 6 Draft Ordinance	May-August 2021
Task 7 Objective Standards Checklist	August 2021
Task 8 SB35 Checklists	August 2021
Task 9 Adoption Hearings (4)	October 2021



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **LEXINGTON PLANNING LLC**.

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☒ **Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☐ **Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☐ **Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

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1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability

- ☒ **All Contract Types**
\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

- ☒ **Construction Specific**
\$2,000,000.00 per occurrence and \$4,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

- ☒ **Automobile Liability**
\$2,000,000.00 per accident for bodily injury and property damage.

- ☒ **Professional Liability / Errors and Omissions**
\$2,000,000.00 per claim and aggregate.

- ☐ **Workers' Compensation and Employer's Liability**
Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

- ☐ **Pollution Liability Insurance**
\$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

- ☒ **General Liability**
(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with

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respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

**Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

**Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

**Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the

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discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. NO SPECIAL LIMITATIONS

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The

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certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.

EXHIBIT C.**California State Contract Requirements**

Lexington Planning (referred to herein as “Contractor”) acknowledges that the services performed under the Contract are paid in part or in whole from funds received under a Planning Grants Program (PGP) pursuant to a Standard Agreement entered into between the Department of Housing and Community Development (referred to herein as the “Department”) and the City, Agreement Number 19-PGP-13532 (referred to herein as “PGP Agreement”), and agrees to comply with the terms and conditions of the PGP Agreement as may be required to facilitate City’s compliance with the PGP Agreement. In addition, Contractor agrees to comply with all regulations and guidelines of the Planning Grants Program.

1. BUDGET DETAIL AND PAYMENT PROVISIONS [Planning Grant Program (PGP) Agreement Exhibit B]

A. Contractor must have adequate cash flow to pay all grant-related expenses prior to requesting reimbursement. [Section 6 Fiscal Administration, Paragraph J]

2. STATE GENERAL TERMS AND CONDITIONS – Fiscal Administration [PGP Agreement Exhibit C]**A. Non-Discrimination Clause** [Section 10]

During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract’s benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Section 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by the awarding California state agency to implement such article. Contract shall permit access by representatives of the Department of Fair Employment and Housing and the awarding California state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours’ notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, section 11105.)

3. PLANNING GRANTS PROGRAM TERMS AND CONDITIONS [PGP Agreement Exhibit D]**A. Accounting Records** [Section 2]

1) Contractor and any subcontractors shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of

incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

2) Contractor must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.

3) Contractor shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with **GAAP**.

4) Contractor agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract.

5) Subcontractors employed by Contractor and paid with moneys under the terms of this Contract shall be responsible for maintaining accounting records as specified above.

B. Compliance with State and Federal Laws, Rules, Guidelines and Regulations [Section 9]

1). Contractor agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the PGP Agreement, the Contractor, its contractors or subcontractors, and any other PGP Agreement activity.

2) During the performance of this Contract, Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.

3) Contractor shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the Contract.

4) Contractor shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

5. Contractor shall adopt and implement affirmative processes and procedures that provide information, outreach and promotion of opportunities in the PGP project to encourage participation of all persons regardless of race, color, national origin, sex, religion, familial status, or disability. This includes, but is not limited to, a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, as required by 24 CFR 92.351.

C. State-Owned Data – Ownership of Work Product and Rights [Section 12, Subsection B]

1) All work Product derived by the Work performed by Contractor and subcontractors under this agreement shall be owned by the Department and shall be considered to be works made for hire by the Contractor and/or subcontractor for the Department. The Department shall own all copyrights in the work product. [Paragraph 1]

2) Contractor and all of Contractor's subcontractors' employees agree to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Contractor or subcontractor from the Department. From time to time upon the Department's request, the Contractor and/or subcontractor shall confirm such assignments by execution and delivery of such assignment, confirmations or other written instruments as the Department may request. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under this Agreement. Contractor hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work. [Paragraph 2]

3) Contractor and all its subcontractors hereby agree to assign to the Department all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. Contractor and/or subcontractor shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that he Contractor and/or subcontractor believes to be new or different. [Paragraph 3]

4) Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement will automatically be vested in the Department and no further agreement will be necessary to transfer ownership to the Department. [Paragraph 4]