

RESOLUTION NO. 20-120

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Four (4) Year Grant Agreement To Provide Funding To The City Of Oakland To Support Library Services For the Following Fiscal Years: 2019-2020, 2020-2021, 2021-2022 and 2022-2023 In The Amount Of One Hundred Twenty Thousand Dollars (\$120,000) Per Year, For A Total Not To Exceed Amount Of Four Hundred Eighty Thousand Dollars (\$480,000)

WHEREAS, Emeryville residents have been receiving library services, including reciprocal privileges throughout the statewide library system, through the Oakland Public Library (OPL) for many years; and

WHEREAS, the last contract between the cities was for the ten-year period from 1998 through 2008 and subsequent payments have been authorized by City Council Resolution; and

WHEREAS, the City has paid \$120,000 per year to Oakland for library services in recent years; and

WHEREAS, the City Manager received a letter from the Director of the Oakland Public Library dated September 21, 2020 requesting payment for the period July 1, 2019 through June 30, 2020 in the amount of \$120,000; and

WHEREAS, following receipt of the September 2020 Oakland invoice, Emeryville staff reached out to Oakland to renew a discussion about a contract for services, at which time the Oakland Public Library Director indicated Oakland's agreement to the four year grant addressed in this Resolution; now therefore be it

RESOLVED, by the City Council of the City of Emeryville that the City Manager is authorized to enter into a four (4) year Grant Agreement, in the form attached hereto as Exhibit A, to provide funding to the City Of Oakland to support Library Services for the following Fiscal Years: 2019-2020, 2020-2021, 2021-2022 and 2022-2023 in the amount of One Hundred Twenty Thousand Dollars (\$120,000) per year for a total not-to-exceed amount of four hundred eighty thousand dollars (\$480,000).

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Oakland Library Services Grant Agreement
City Council Meeting | December 1, 2020
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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, December 1, 2020, by the following vote:

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

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

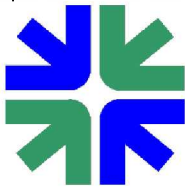
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CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY



City of Emeryville

CALIFORNIA

GRANT RECIPIENT CONTRACT

THIS GRANT RECIPIENT CONTRACT ("Contract") is entered into as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **CITY OF OAKLAND, OAKLAND PUBLIC LIBRARY** ("Contractor"). The City and Contractor may be collectively referred to as "Parties" or individually referred to as "Party" in this Contract.

WITNESSETH THAT

WHEREAS, the City operates a grant program to provide library services to its residents ("Program"); and

WHEREAS, the City and the Contractor have an interest in furthering the purpose of the Program; and

WHEREAS, the City and the Contractor recognize that the Library Services, as more fully described in **EXHIBIT A**, are eligible for funding from the Program; and

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived there from, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS

The Recitals set forth above are true and correct and are incorporated into this Contract as though fully set forth herein.

2. CONTRACTOR FUNDING AND SUPPORT

For Fiscal Year(s) 2019-20, 2020-21, 2021-22 and 2022-2023 ("Fiscal Year"), the City will program a total of **FOUR HUNDRED AND EIGHTY THOUSAND DOLLARS AND NO CENTS (\$480,000.00)** of the Program's funds for the Project ("Project Funds"). The Project Funds will be disbursed to Contractor, as checked below:

- ☐ In a lump sum upon execution of this Contract by the Parties. Project Funds disbursed shall be expended during the Fiscal Year solely on the Project and Services as described in **Exhibit A**. Contractor shall return to the City any Project Funds not expended during the Fiscal Year within thirty (30) calendar days of either completion of the Project or the end of the Fiscal Year, whichever occurs first.
- ☒ As set forth in **Exhibit A**.

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

3. SERVICES

The Contractor's scope of services and the time periods of performance for such services are set forth in **EXHIBIT A** ("Services") attached hereto and by this reference made a part hereof. The Contractor shall not undertake any work under the terms of this Contract that is outside of the Services as outlined in **EXHIBIT A**.

4. STANDARD OF CARE

Contractor shall perform all Services under this Contract in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout performance of the Services.

5. TIME OF PERFORMANCE

The time for performance is as checked below:

- ☐ The Services by Contractor are to commence on the "Effective Date" and shall continue in full force and effect through and including **END DATE**, or until completed, whichever occurs first.
- ☒ As set forth in **Exhibit A**.

6. RECORD RETENTION AND AUDITS


The Contractor shall maintain such property, personnel, financial and other records and accounts as are considered necessary by the City to assure proper accounting for all Project Funds authorized under this Contract. Records, maps, field notes and supporting documents and all other records pertaining to the use of Project Funds disbursed to the Contractor hereunder shall be retained by the Contractor and available to the City for examination and for purposes of performing an audit for a period of three (3) years from the date of expiration or termination of this Contract. The Contractor shall permit on-site inspection by City representatives or other federal or state officials with oversight over the Project or Services with five (5) business days prior written notice, and ensure that its officials, employees, consultants and agents furnish such information and cooperation, as in the judgment of the City, may be relevant to a question of compliance with contractual conditions and directives, or the effectiveness, legality, and achievements of the Project and/or Services, or for audits. All the Project and/or Services specific Contractor records, with the exception of confidential client information, shall be made available to representatives of the City for review upon request. In the event of litigation or an audit relating to this Contract or funds paid to the Contractor by the City under this Contract, such records shall be retained by the Contractor until all such litigation or audit has been resolved. This section shall survive termination of this Contract.

7. ACCOUNTING

- A. All expenditures 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.
- B. The Contractor shall establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles, practices, and standards.
- C. At all times, the Contractor shall maintain the financial books and records of the Contractor to be established pursuant to this Contract and maintained by the Contractor separate and apart from other Contractor financial records and shall set forth all financial activity hereunder as a separate line item in the annual budget of the Contractor.

8. REPORTING REQUIREMENTS

The Contractor shall submit reports as requested by the City in order to fulfill its requirements in accordance with the City's grant program requirements. In addition, the Contractor shall submit the following reports, as checked below:

- ☐ Within thirty (30) calendar days of the end of the Project or the end of the fiscal year, whichever is earlier, the Contractor will submit a report, which must contain the following:
 - ☐ A description of the actual Project revenue received, including but not limited to, City grant funds, other agency grant funds, private and corporate donations, as well as any sales.
 - ☐ The actual Project expenditures by line-item.
 - ☐ A description of the completed Project, including attendance numbers.
 - ☐ Copies of any promotional materials, newspaper articles or other publicity.
 - ☐ The signature of the Community Services Director prior to submittal to the City's Contract Coordinator.
 - ☐ Other: 

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- ☐ On a *monthly / quarterly* basis, the Contractor will submit a report, which must contain the following:
 - ☐ A description of the actual Project revenue received, including but not limited to, City grant funds, other agency grant funds, private and corporate donations, as well as any sales.
 - ☐ The actual Project expenditures by line-item.
 - ☐ A description of the completed Project, including attendance numbers.
 - ☐ Copies of any promotional materials, newspaper articles or other publicity.
 - ☐ Other: *Description*
- ☒ As set forth in **Exhibit A**.

9. 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 consultants, 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.

10. CALIFORNIA LABOR CODE REQUIREMENTS

It shall be mandatory upon the Contractor and all subcontractors to comply with all applicable http://leginfo.ca.gov/pub/leg_00_01/l_0001_0100.html provisions, which may 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 Sections 1777.1). 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 any failure or alleged failure to comply with applicable California Labor Code provisions.

11. CITY LABOR REQUIREMENTS

As of 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 <https://www.codepublishing.com/CA/Emeryville/#!/Em> <https://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>, 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. 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 <https://www.codepublishing.com/CA/Emeryville/#!/Em>. 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. 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. 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 <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance> 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.

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance> <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>, as set forth in <https://www.codepublishing.com/CA/Emeryville/#!/Em>, to the extent it is applicable.

12. INSURANCE

Contractor shall not commence performance of Services or the Project 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.

13. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's 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.

14. WAIVER AND RELEASE

Contractor hereby waives, releases, and discharges and agrees not to sue the City, their representatives, officials, officers, employees, attorneys, agents, and volunteers for any injury, death, or damage to or loss of personal property arising out of, pertaining to, or relating to, directly or indirectly, the Project, the Services or this Contract. Further, after consultation with its independent counsel, Contractor expressly waives any and all rights provided by California Civil Code Section 1542, which states that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT OR EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS RELEASE WITH THE DEBTOR.

_____ By initialing, Contractor acknowledges, represents and warrants that it has carefully read this waiver, release, and agreement not to sue and fully understands its contents and understands the significance and consequences of this waiver, and hereby assumes full responsibility of any damages or losses caused by this waiver. Contractor further acknowledges that it may hereafter discover facts in addition to, or different from, those that is known or believed by it to be true with respect to the claims hereby released. Contractor hereby agrees that it nonetheless intends to, and hereby does fully, finally, and forever, settle and release any and all such claims without regard to the subsequent discovery or existence of such different or additional facts. Contractor is aware that by initialing in the space below and signing

this Contract, Contractor is giving up legal rights and is signing in its own free will. Contractor understands this is a release of all liability, and is material to the City entering into this Contract.

15. DISCRIMINATION

- A. No person shall, on the grounds of race, sex, creed, color, religion or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment supported by this Contract.
- B. 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. As provided for in the indemnity obligations of this Contract, Contractor shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

16. CHANGES IN GRANT ALLOCATION

- A. The City may grant additional funds at its discretion for use by the Contractor to assure the successful completion of the Project or Services.
- B. Notwithstanding anything to the contrary in this Contract, the City's obligation hereunder to provide Project Funds to Contractor for the purpose of reimbursing Contractor for its qualified costs and expenses shall be fully contingent upon the continuing availability of funding and the allowability of Contractor's invoiced costs and expenses. In the event City finds any of Contractor's costs or expenses to be non-allowable, Contractor shall be solely liable for such costs or expenses and must return any Project Funds expended on such non-allowable costs or expenses to City within thirty (30) days of notification by the City.

17. NOTICES

All notices herein required shall be in writing. Notices shall be sent by prepaid First-Class Mail to the following Address:

CITY	CONTRACTOR
<p>Christine Daniel, City Manager 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-596-4371 E-Mail : cdaniel@emeryville.org</p> <p><i>with a copy to:</i> Pedro Jimenez, Community Services Director 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-450-7813 E-Mail : pjimenez@emeryville.org</p>	<p>Jamie Turbak, Director of Library Services 125 14th Street, Suite 210 Oakland, California 94612 Phone No.: 510-238-6610 E-Mail : jturbak@oaklandlibrary.org</p>

18. ASSIGNMENT

This Contract is not assignable by the Contractor without the express prior written consent of the City, which consent shall be given in the City sole discretion. Any attempt by the Contractor to assign any performance of the terms of this Contract shall be null and void and shall constitute a material breach of this Contract upon the occurrence of which the City may, among its other remedies, and without limitation or prior notice, cancel, terminate or suspend this Contract.

19. TERMINATION

The City may terminate this Contract at any time with or without cause. If the City terminates this Contract without cause, Contractor shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. If City terminates this Contract for cause, Contractor shall promptly return any Project Funds not expended to the City, and City shall be entitled to conduct an audit as provided for in Section 6 and to recover any Project Funds that were expended in violation of this agreement. Contractor may terminate this Contract only upon one year written notice to the City with or without cause. Notwithstanding anything to the contrary, the City may terminate this Contract immediately upon notice that the City Council does not appropriate sufficient funds for this Contract.

20. CONFLICT OF INTEREST

The Contractor, its agents and employees shall comply with all applicable federal, state, county, and city laws and regulations governing conflict of interest. To this end, the Contractor will make available or shall provide copies of all applicable federal, state,

county, and city laws and regulations governing conflict of interest, to its agents and employees.

21. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES

The Contractor agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this Contract. Project Funds under this Contract will be used exclusively for performance of the Scope of Services required under this Contract and no funds shall be used to promote any religious or political activities.

22. 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.

23. SEVERABILITY

Each and every section of this Contract shall be construed as a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof to certain circumstances shall be declared invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

24. AMENDMENT OR MODIFICATION

This Contract may only be modified or amended by written instrument duly approved and executed by each of the Parties hereto. Any such modification or amendment shall be valid, binding and legally enforceable only if in written form and executed by each of the Parties hereto, following all necessary approvals and authorizations for such execution.

25. GOVERNING LAW AND ATTORNEY'S FEES

This Contract shall be governed by the laws of the State of California. Any legal action arising from or related to this Contract shall be brought in the Superior Court of the State of California in and for the County of Alameda. In the event that any suit or action is instituted to enforce any provision in this Contract, the prevailing party in such dispute shall be entitled to recover from the losing party all reasonable attorney's fees, costs and expenses arising out of enforcing any right of such prevailing party under or with respect to this Contract, including without limitation.

26. COMPLIANCE WITH LAW AND OTHER REQUIREMENTS

The Contractor shall comply with all applicable local, state and federal laws, including, but not limited to, environmental acts, rules and regulations applicable to the work to be performed by the Contractor under this Contract. The Contractor shall maintain all necessary licenses and registrations for the lawful performance of the work required of the Contractor under this Contract. In addition to the above, the Contractor is required to comply with the additional requirements as checked below:

- ☐ The Contractor is informed and aware of the funding requirements applicable to this Contract and the Contractor flow down requirements contained therein and on that basis certifies that it shall comply with said Contractor flow down requirements in the performance of this Contract ("Funding Requirements"). Such Funding Requirements are attached hereto as Exhibit C and incorporated herein by this reference.
- ☐ Any individuals providing direct service to the City's Youth Recreation Program and/or through the Emery Unified School District as part of this Contract must be fingerprinted by the Emeryville Police Department, and receive approval from the City Manager or designee before initiating the Project of Scope of Services.
- ☐ The Façade Improvement Grant Program requirements set forth in **Exhibit A**, attached hereto, and incorporated by reference.
- ☐ Other Requirements as set forth in **Exhibit C** attached hereto and incorporated by reference.

27. NON-WAIVER

Failure of either Party to enforce any provision of this Contract shall not constitute a waiver of the right to compel enforcement of the same provision or any remaining provisions of this Contract.

28. REPRESENTATIVES OF PERSONS EXECUTING THE CONTRACT

The persons executing this Contract warrant that they are duly authorized to execute this Contract on behalf of and bind the respective Party that each purports to represent.

29. PRESS RELEASES

Neither Party will use the name of the other Party or its employees in any advertisement or press release without the prior written consent of the other Party.

30. CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

The Contractor agrees that in no event will the City become liable to the Contractor under this Contract for any damages including but not limited to, special damages, loss

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of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, negligence, strict liability or otherwise. The limitations and exclusions of liability set forth in this Section shall apply regardless of fault, breach of contract, tort, strict liability or otherwise of the City, its employees or sub-consultants.

31. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between Parties. This Contract supersedes all prior negotiation, discussions and agreements between Parties concerning the subject matters covered herein. The Parties intend this Contract to be the final expression of their agreement with respect to the subjects covered herein and a complete and exclusive statement of such terms.

SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Grant Recipient Contract
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32. SIGNATURE PAGE TO GRANT RECIPIENT 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

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City Attorney

Dated:

CITY OF EMERYVILLE

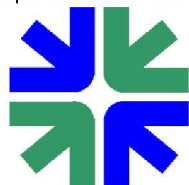
Christine S. Daniel, City Manager

Dated:

CITY OF OAKLAND

Jamie Turbak, Director of Library Services

(Signature)



City of Emeryville

CALIFORNIA

GRANT RECIPIENT CONTRACT

EXHIBIT A

1. PROJECT DESCRIPTION

Contractor provides the Oakland Public Library, which consists of 16 locations, to provide library services to residents of the City of Oakland.

2. SERVICES

During the term of this Contract, Contractor shall issue library cards individually to the residents of Emeryville on the same terms and conditions that they are issued to the residents of Oakland. Such library cards issued to residents of Emeryville shall confer the same privileges as the library cards issues to residents of Oakland. Contractor shall not have the right to receive any fee, charge or payment from an Emeryville resident library cardholder, except for those fees normally charged to Oakland resident library cardholders (such as fines for lost or overdue books). Contractor retains complete authority to adjust the level of service offered to cardholders and the general public, so long as Emeryville resident cardholders are treated the same as Oakland resident library cardholders.

3. TERM

The term of this Contract shall be for four years, commencing on July 1, 2019, and ending on June 30, 2023.

4. DISBURSEMENT OF FUNDS

For each City fiscal year ("FY") during the term of this Contract, City agrees to pay Contractor the following amount for library services offered to Emeryville residents:

- a. FY 2019-2020: \$120,000 (one hundred, twenty thousand dollars)
- b. FY 2020-2021: \$120,000 (one hundred, twenty thousand dollars)
- c. FY 2021-2022: \$120,000 (one hundred, twenty thousand dollars)
- d. FY 2022-2023: \$120,000 (one hundred, twenty thousand dollars)

The City's fiscal year runs from July 1 to June 30 of the following year. For payments for FY 2019-20 and FY 2020-21, the City shall make payment within 30 calendar days of the Effective Date of this Contract. For future fiscal years, City shall make payment for the current fiscal year by September 1.

The payment for each fiscal year shall be subject to appropriation by the City Council.

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5. REPORTING

Contractor is not required to render any reports to the City.



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **CITY OF OAKLAND**.

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

City of Emeryville | Contract Insurance Requirements (Exhibit B)
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include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

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:

City of Emeryville | Contract Insurance Requirements (Exhibit B)
REV 08/2020☒ **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 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.

City of Emeryville | Contract Insurance Requirements (Exhibit B)
REV 08/2020☒ **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 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 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.