

RESOLUTION NO. 21-29

Resolution Of The City Council Of The City Of Emeryville Authorizing the City Manager to Enter Into A Professional Services Agreement With NV5 Inc., For An Amount Not To Exceed \$61,595 For Engineering Design and Regulatory Permitting Services For Point Emery Shoreline Protection Project, EPW 101-18 (CIP #16475021)

WHEREAS, the Point Emery Shoreline Protection Project is a Capital Improvement Program project, EPW 101-18 (CIP #16475021), with the purpose of maintaining and preserving existing park land in danger of erosion from tidal and wave action; and

WHEREAS, the shoreline of the peninsula is currently not protected from wave action along portions of the northern shore and the westerly part of the south shore whereas the easterly part of the northern shore as well as the shoreline south of the peninsula is protected with rip-rap (large diameter rubble, stones, and boulders); and

WHEREAS, the unprotected portions of the point are experiencing erosion which will eventually lead to loss of park land; and

WHEREAS, on July 24, 2018 City Council adopted a Resolution No. 18-102 authorizing the City Manager to enter into a Professional Services Agreement with Noble Consultants, Inc. to provide investigative and engineering design services and to assist in obtaining required permits for the necessary improvements for the amount of \$90,035; and

WHEREAS, on October 1, 2019 City Council adopted Resolution No. 19-139 authorizing the City manager to enter into a First Amendment to the Professional Services Agreement with Noble Consultants, Inc. for the amount of \$32,620 to perform additional tasks required to obtain project permitting; and

WHEREAS, Mr. Wenkai Qin, PhD, PE, D.CE has been the technical and responsible charge for the Point Emery Project and he has left employment with Noble Consultants Inc., and Noble Consultants, Inc. has identified they cannot provide replacement personnel to take over the technical and professional leadership of the project; and

WHEREAS, Pursuant to section 4.10 Key Personnel section of the Professional Services Agreement executed June 20, 2018 between the City of Emeryville and Noble Consultants, Inc, the contract with Noble Consultants, Inc. will be terminated as the consultant cannot provide substitute personnel of a comparable or superior experience to carry on the project management; and

WHEREAS, Mr. Qin is now on staff with NV5, Inc., and as the project would experience significant cost impacts and delays to initiate work with a new responsible charge engineer, staff is recommending that it is in the best interest of the City and the project to execute a Professional Services agreement with NV5, Inc., to complete the engineering and technical support through construction for the Point Emery project.

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; and

WHEREAS, NV5, Inc. has provided a scope of services in the amount of \$61,595 to complete permitting, engineering design and technical support through bidding for construction of the project; and

WHEREAS, the Professional Services Agreement with NV5, Inc. will be funded from existing authorized funds in the Emery Shoreline Protection Project EPW 101-18 (CIP 16475021) as follows:

Amount	Project	Fund
\$61,595	16475021	475 – General Capital

Now, therefore, be it

RESOLVED, that the City Manager is hereby authorized to enter into a Professional Services Agreement to the contract with NV5, Inc., in the form attached hereto as Exhibit A, for an amount not to exceed \$61,595 for engineering design and regulatory permitting services for Point Emery Shoreline Protection Project, EPW 101-18 (CIP #16475021)

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, April 20, 2021, by the following vote:

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

ATTEST:

DocuSigned by:

Sheri Hartz

FB7B5D8EAD6A4BE...

CITY CLERK

DocuSigned by:

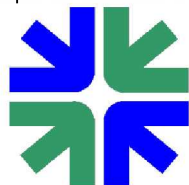
Dianne Martinez

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MAYOR

Michael Quinn

CITY ATTORNEY



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **NV5, INC** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for Point Emery Shoreline Protection Project; 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 **JUNE 30, 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.	

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 **SIXTY ONE THOUSAND FIVE HUNDRED AND NINETY FIVE DOLLARS AND NO CENTS (\$61,595.00)**, 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 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.

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

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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 shall be retained for three years or until such audit findings 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 may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City 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.

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 <https://www.codepublishing.com/CA/Emeryville/#!/Eme>, 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 <https://www.codepublishing.com/CA/Emeryville/#!/Eme>. 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

4.13.4 Living Wage

4.13.5 Minimum Wage and Paid Sick Leave

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

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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 [https://leginfo.ca.gov/pub/00_01/0001_0186_0199_0000.html](https://leginfo.ca.gov/pub/00_01/0001_0186_0199_0000_chapter_01_0001_0186_0199_0000.html), 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.

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- 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 **Michael Roberts** for the City and **Wenkai Qin** for the Contractor:

CITY	CONTRACTOR
Michael Roberts, Senior Civil Engineer Phone No: 510-596-4333 E-Mail : mroberts@emeryville.org	Wenkai Qin, Project Manager Phone No: 310-926-8499 E-Mail : Wenkai.Qin@nv5.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
Mary Grace Houilhan Public Works Director 1333 Park Ave Emeryville, California 94608 Phone No: 510-596-4341 E-Mail : mghoulihan@emeryville.org <i>with a copy to:</i> Michael Roberts, Senior Civil Engineer 1333 Park Ave Emeryville, California 94608 Phone No: 510-596-4333 E-Mail : mroberts@emeryville.org	Carmen Kasner Regional Managing Director NV5, Inc 15092 Avenue of Science Suite 200 San Diego, Ca 92128 Phone No: 858-385-2131 E-Mail : carmen.kasner@nv5.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

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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:

Michael Guina

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City Attorney

Dated:

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

4/5/2021

NV5, INC

DocuSigned by:

Carmen Kasner

330CAEE3EC50463...

Carmen Kasner, Regional Managing Director

(Signature)



March 19, 2021

Mr. Michael Roberts, P.E.
Senior Civil Engineer
Public Works Department
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Subject: Proposal for Engineering Design and Permitting Services for Shoreline Protection of Point Emery

Dear Mike:

NV5, Inc (NV5) is pleased to submit our proposal for Engineering Design and Permitting Services associated with the above-referenced project.

This proposal covers the effort required to provide engineering design and regulatory permitting services for providing shoreline protection to Point Emery in the City of Emeryville, California.

This proposal includes the following four sections:

1. Scope of Services
2. Additional Services Offered
3. Assumptions and Exclusions
4. Proposed Compensation

We appreciate the opportunity to provide this proposal and look forward to working with you. Please feel free to call me at (310) 926-8499 if you have any questions.

Sincerely,

NV5, Inc.

A blue ink signature of Wenkai Qin, consisting of a stylized 'W' and 'Q' followed by a horizontal line.

Wenkai Qin, PhD, PE, DCE
Senior Project Manager

A blue ink signature of Carmen Kasner, written in a cursive style.

Carmen Kasner, PE
Regional Managing Director

March 19, 2021

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Scope of Services

Point Emery is owned and managed by the City of Emeryville (City). Point Emery Park is already eroding rapidly; more frequent flooding associated with higher Bay waters would accelerate this erosion. It would require significant and expensive shoreline protection improvements to maintain the park's current size. A capital improvement plan has been proposed by the City. This plan includes a project that would install shoreline protection (revetment) along the unprotected portions of the northern shoreline and the westernmost portions of the southern shoreline of Point Emery.

The City and its contractors have completed the field investigation including a topographic survey and a geotechnical investigation, prepared preliminary shoreline protection plans, performed a biological site assessment; and have submitted permits to the regulatory agencies including the San Francisco Bay Regional Water Quality Control Board, U.S. Army Corps of Engineers, and San Francisco Bay Conservation and Development Commission. The work proposed herein includes preparation of responses to the review comments and questions from these regulatory agencies and preparation of the construction contract documents including design drawings, technical specification sections, and engineer's opinion of estimated construction cost. Our proposed scope of services consists of the following:

Task 1 Regulatory Permitting

Consultant will respond to regulatory permitting agencies' questions and review comments. In addition, consultant, through its sub-consultant Padre, will review pertinent plans, permit applications, and correspondence provided to Consultant for the project. Consultant will cause to be prepared a set of questions for discussion with the City regarding potential strategies for negotiating permit conditions with the respective agencies. Consultant, through its sub-consultant Padre, will attend web-based meetings and conference calls as needed during the permitting phase of the project. Consultant will assist the City with preparation of responses to agency questions with the objective of finalizing project permit conditions and mitigation requirements, as applicable. If needed, Consultant will assist with preparation of a mitigation strategy to facilitate review and approval of the Project by the permitting agencies. This strategy may include additional measures to improve aquatic habitat that may be impacted as a result of the Project. If determined to be necessary to supplement the existing mitigation strategy (beach cleanup and debris removal), Consultant will review existing wetland and habitat restoration projects in the San Francisco Bay that the applicant may be able to use as a financial contribution to satisfy any remaining mitigation requirement. Consultant will coordinate with the regulatory agencies to determine restoration projects in the region that may be appropriate for use as compensatory mitigation for the impacts associated with the shoreline protection project.

Task 2 50% Submittal

Consultant with support from R. M. Noble & Associates (RMN) will prepare a 50% set of construction drawings with plan view, typical cross-sections, and any necessary details of the approved preliminary plan. This will also include sufficient technical notes and conditions on the drawing set. Regulatory permitting requirements will be incorporated in either our 50% drawings or 90% drawings as they become available. Consultant will also provide an engineer's opinion of estimated construction cost at the 50% submittal.

March 19, 2021

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Task 3 90% Submittal

Consultant with support from RMN will prepare a 90% set of construction drawings after incorporating the City's review comments from the 50% submittal. Consultant will prepare technical specification sections for construction bidding. We assume that the City will provide us with a Word version of the City's standard construction documents for our edits and additions as necessary. Consultant will also provide the updated engineer's opinion of estimated construction cost at the 90% submittal.

Task 4 100% Submittal

Consultant with support from RMN will prepare a 100% (final) set of construction drawings with any necessary details of the approved 90% construction drawings. Consultant will also provide updated technical specification sections for construction bidding and updated engineer's opinion of estimated construction cost at the 100% submittal.

Task 5 Quality Assurance

Consultant will provide QA/QC of the final submittal.

Additional Services Offered

While the services provided below are not included within this project scope, they are within the capabilities of NV5 and can be provided if requested by the client. Scope, fee and schedule for each service will be negotiated prior to commencing any work.

1. Topographic survey
2. Construction management
3. Geotechnical study

Assumptions and Exclusions

1. The City shall provide NV5 with all project files for the work that has been completed by Noble Consultants-GEC, Inc.
2. The City shall provide a Word version of the City's standard construction documents for our edits and additions as necessary.
3. Environmental permitting and documentation is excluded.

Proposed Compensation

Client agrees to compensate Consultant for such services as indicated below:

Progress billings will be forwarded to the Client on a monthly basis. These billings will include fees earned for the billing period. Project will be billed on a Time & Materials basis per the rate sheet

March 19, 2021

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included with this proposal. A 10% mark-up will be used for the services conducted by the subconsultants.

Total Fee: \$61,595

Breakdown of Total Fee

Task 1	Regulatory Permitting.....	\$17,294
Task 2	50% Submittal	\$15,301
Task 3	90% Submittal	\$17,100
Task 4	100% Submittal	\$10,645
Task 5	Quality Assurance	\$1,028
	Direct Costs	\$227

Payment Provisions

Client shall pay the Consultant for basic services within 30 days of receipt of invoice from Consultant. In no event shall non-payment of Client by Owner relieve Client's responsibility to pay Consultant for Services, basic or additional, approved or authorized by Client.

The fees proposed herein shall apply until December 2021. Due to ever-changing costs, Consultant may increase that portion of the contract fee for which work remains to be completed after that date. The adjustment will be based on the average percentage increase of the new rate schedule over the previous year. This adjustment may be applied annually if the project extends beyond what would normally be considered a reasonable project processing and approval period.

Project Name: Point Emery Shoreline Protection Project
Client/Owner: City of Emeryville

NV5

Tasks	LABOR CODE/STAFF HOURS				TOTALS	
	OSPP \$257	OSAP \$254	OSCT3 \$134	- -	HOURS	FEE
1.0 Regulatory Permitting Responses to regulatory permitting agencies' questions		24			24	\$6,096
2.0 50% Submittal 50% Construction Drawings 50% Cost Estimate		32 8	24		56 8	\$11,344 \$2,032
3.0 90% Submittal 90% Construction Drawings 90% Technical Specipficatpion and Construction Cost Estimate		24 24	12		36 24	\$7,704 \$6,096
4.0 100% Submittal 100% Construction Drawings 100% Technical Specipficatpion and Construction Cost Estimate		12 16	12		24 16	\$4,656 \$4,064
5.0 Quality Assurance QA/QC	4				4	\$1,028
Reimb.						227

NV5 Sub-Total Fees:**\$43,247****Subconsultants**

Padre Associates, Inc.	\$10,180
R. M. Noble & Associates	\$6,500
Sub-Total Fees without Mark-up	\$16,680
Mark-up (10%)	\$1,668
Sub-Total Fees with Mark-up	\$18,348

Total Fees:**\$61,595**



NV5 BASIC BILLING RATES

OFFICE SERVICES:

TECHNICAL SERVICE:

Engineering Aid/Planning Aid - OSEPA	\$77
Project Assistant - OSPA	\$88
Project Administrator - OSPAD	\$98
CADD Technician I - OSCT1	\$98
CADD Technician II - OSCT2	\$122
CADD Technician III - OSCT3	\$134
Senior CADD Technician/Designer - OSSCT	\$149
Design Supervisor - OSDS	\$160

PROFESSIONAL:

Junior Engineer/Planner/Surveyor - OSJP	\$110
Assistant Engineer/Planner/Surveyor - OSTSP	\$135
Associate Engineer/Planner/Surveyor - OSEEP	\$160
Senior Engineer/Planner/Surveyor - OSSP	\$155
Manager - OSMP	\$190
Structural Engineer - OSSTP	\$176
Associate - OSAP	\$254
Principal - OSPP	\$257

EXPENSES:

Plotting and In-House Reproduction - EPHP	1.10 x Cost
Subsistence - ESUB	1.10 x Cost
Other Expenses-Including Subconsultants & Purchased Services Through Subcontracts - EOTH	1.00 x Cost
Mileage - Outside Local Area - EMIL	Per Accepted IRS Rate
Litigation Support - ELIT	\$400

FIELD SERVICES:

CONSTRUCTION MANAGEMENT:

Junior Field Engineer - FSJFE	\$122
Assistant Field Engineer - FSTFE	\$129
Associate Field Engineer - FSEFE	\$152
Senior Field Engineer - FSSFE	\$165
Construction Manager - FSCM	\$190

SURVEYING:

1-Person Survey Crew (GPS)(Robotic) - FS1R	\$199
1-Person Survey Crew - FS1P	\$160
2-Person Survey Crew - FS2P	\$285
3-Person Survey Crew - FS3P	\$350
Survey Manager - FSSM	\$220



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **NV5 INC.**

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)
REV 08/2020

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.