

RESOLUTION NO. 21-65

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Professional Services Contract With Fehr and Peers In An Amount Not To Exceed \$133,397 For Preparation Of A Transportation Impact Assessment For The EmeryStation Overland Project Located At 1580 62nd Street And Appropriating \$33,397 In Expenditures To Division 1725, "Planning Reimbursables", Account 80050, Professional Services, And \$33,397 In Revenues To Account 58760, Planning Reimbursements

WHEREAS, the City desires to have a Transportation Impact Assessment prepared for the proposed EmeryStation Overland Project at 1580 62nd Street ("Project") pursuant to the California Environmental Quality Act (CEQA); and

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

WHEREAS, the City has an on-call contract with Fehr and Peers for doing such analysis for private development proposals; however, due to the project's size and complexity, the cost of analysis is beyond the scope of the on-call contract; and

WHEREAS, Fehr and Peers submitted a scope of work to prepare a Transportation Impact Assessment for the Project on April 14, 2021, which was further revised and resubmitted on April 21, 2021; and

WHEREAS, the City has determined that Fehr and Peers is qualified by training and experience to render such services, and the City wishes to retain Fehr and Peers to provide these services; and

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

WHEREAS, the fiscal year 2021-22 budget adopted by the City Council on June 1, 2021 includes expenditures of \$100,000 in Division 1725, "Planning Reimbursables", Account 80050, Professional Services, and revenues of \$264,000 in Account 58760, Planning Reimbursements, and it is necessary to increase these amounts by \$33,397 to cover the cost of this contract; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Professional Services Contract with Fehr and Peers, in the form attached hereto as Exhibit A, for an amount not to exceed \$133,397; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby appropriates \$33,397 in expenditures to Division 1725, "Planning Reimbursables", Account 80050, Professional Services, and \$33,397 in revenues to Account 58760, Planning Reimbursements.

Resolution No. 21-65
Fehr and Peers Professional Services Contract for EmeryStation Overland Project
City Council Meeting | June 15, 2021
Page 2 of 2

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, June 15, 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	

DocuSigned by:

Shanne Martinez

BBAF287D25AB463...

MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Sheri Hartz

FB7B5D8EAB6A4BE...

CITY CLERK

DocuSigned by:

Andrea Visveshwara

962663BD5573494...

INTERIM 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 **FEHR & PEERS** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for **EmeryStation Overland Transportation Impact Assessment**; 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.	

REV 06/2020

Exhibit A

2. WORK CHANGES

2.1 *City Rights to Change*

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

2.2 *Additional Work Changes*

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

2.3 *City Manager Execution*

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

3. COMPENSATION AND METHOD OF PAYMENT

3.1 *Compensation for Services Performed*

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

3.2 *Total Compensation Amount*

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED AND THIRTY-THREE THOUSAND, THREE HUNDRED AND NINETY-SEVEN DOLLARS DOLLARS AND NO CENTS (\$133,397.00)**, 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

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

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

4.11 Authority to Contract

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

4.12 Ownership of Work

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

4.13 City Labor Requirements

4.13.1 Compliance

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

4.13.2 Applicability

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

4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and

compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

4.13.4 Living Wage

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

4.13.5 Minimum Wage and Paid Sick Leave

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

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

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

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

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

4.14.5 Event of Default

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

5. **TERMINATION**

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.

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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 **MIROO DESAI** for the City and **KATHRIN TELLEZ** for the Contractor:

CITY	CONTRACTOR
Miroo Desai Senior Planner Phone No: 510-596-3785 E-Mail : mdesai@emeryville.org	Kathrin Tellez, Principal Phone No: 510.834.3200 E-Mail : k.tellez@fehrandpeers.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
<p>Charles S. Bryant, Community Development Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4361 E-Mail : cbryant@emeryville.org</p> <p><i>with a copy to:</i> Miroo Desai Senior Planner 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-3785 E-Mail : mdesai@emeryville.org</p>	<p>Kathrin Tellez, Principal 2201 Broadway, Suite 602 Oakland, CA 94612 Phone No: 510.834.3200 E-Mail : k.tellez@fehrrandpeers.com</p>

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

Compliance with terms and conditions set forth in **Exhibit C** is ☒ **required** / ☐ **not 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 herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Professional Services Contract
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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:

Andra Visnesuvara as Interim

962663BD5573494...

City Attorney

Dated:

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

5/12/2021

FEHR & PEERS

DocuSigned by:

Kathrin Tellez

C8344249F24F44E...

Kathrin Tellez, Principal

(Signature)

Attach:
W-9 Form

Attach:
Business License Certificate



April 21, 2021

Miroo Desai
Senior Planner, City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Subject: Emerstation Overland Transportation Impact Assessment

Dear Miroo:

Thank you for inviting Fehr & Peers to submit this scope of work to prepare a transportation impact assessment for the proposed Emerstation Overland project in Emeryville. The project would redevelop a 172,560 square foot parcel bounded by 62nd Street, 63rd Street, Hollis Street, and Overland Avenue. As part of the project, 77,000 square feet of existing warehouses would be demolished, and a 300,000 square foot biotech office/lab use would be constructed. Existing uses of 41 live-work units and a small existing restaurant space would remain. The project would also construct a 495-space parking garage with access on 63rd Street.

The project site is located adjacent to Hollis Street, which is utilized by Emery Go-Round, as well as adjacent to the Overland Avenue Bicycle Boulevard and the proposed 62nd Street Bicycle Boulevard. Therefore, our assessment will include an evaluation of the project's effects on all modes of travel in the study area.

SCOPE OF WORK

We will complete the following tasks as part of this scope of work.

Task 1 – Project Trip Generation, Trip Distribution, and Study Intersection Selection

Fehr & Peers will estimate the automobile trip generation for the project based on data Fehr & Peers has collected at sites containing similar land uses and transportation setting as the project, as well as the data and methodology in the latest version of the Institute of Transportation Engineers' (ITE) *Trip Generation Manual*. Since ITE data is generally based on data collected at suburban sites where almost all trips are by automobile, we will adjust the ITE-based trip generation to account for the project location in Emeryville, where some trips are expected to be made by transit, walking, bicycling, or ridesharing. If a Transportation Demand Management (TDM) plan has been prepared, we will also consider the various TDM plan elements.

Vehicle trip distribution will be estimated based on the relative location of complementary land uses, existing traffic patterns in the vicinity of the site, area traffic congestion, and the relative locations of freeway on- and off-ramps. Once the general vehicle trip distribution has been established, the project vehicle trips will be assigned to the roadway network and shown on figures at the intersection turning movement level for the project.

Based on the expected level of vehicle trip generation and expected trip distribution, we will identify a list of study intersections where the project could appreciably add vehicle traffic. For budgeting purposes, we assume that up to 25 intersections would be included in the assessment, and the time periods evaluated would include the weekday morning and evening peak periods when the project would generate the most traffic.

Fehr & Peers will summarize the results of Task 1, including a list of study intersections and the rationale for their selection, in a memorandum and submit to the City of Emeryville to review and approve. If necessary, the memorandum will also provide modifications to this scope of work. The assumptions memorandum will also outline the methods we propose to evaluate the projects effect on the transit, bicycle and pedestrian system, as well as outline the vehicle miles of travel assessment.

Task 2 – Intersection Counts and Volumes

Based on the study locations identified in Task 1, Fehr & Peers will obtain weekday morning (7:00 AM to 9:00 AM) and evening (4:00 PM to 6:00 PM) peak period intersection turning movement counts, including a separate count of vehicles, pedestrians, bicycles, and trucks from previously completed studies in the area. Due to ongoing restrictions on non-essential activities resulting from the Covid-19 pandemic, current traffic volumes do not represent typical conditions, and it is uncertain when traffic volumes will return to normal levels. This scope assumes that collections are not viable or representative of baseline conditions, so vehicle turning movement, pedestrian, and bicycle movements for the study intersections will use counts collected in the past five years. If recent count data is not available at some study locations, we will discuss options for estimating counts at these intersections with City staff.

Fehr & Peers will develop AM and PM peak hour intersection turning movement volumes under the following scenarios for the study intersections:

- Existing Conditions – Based on traffic data collected over the past five years
- Existing Plus Project Conditions – Existing Conditions plus traffic expected to be generated by the project
- Near-Term Conditions – Existing Conditions plus traffic generated by other pending projects expected to be developed in the next 5 to 10 years. We will confirm with City of Emeryville staff the level of anticipated development in the study area to consider in the analysis of near-term

conditions. Near-Term Conditions will also represent changes to traffic patterns and intersection signalization resulting from implementation of the Emeryville Quiet Zone Study.

- Near-Term Plus Project Conditions – Near-Term Conditions plus traffic expected to be generated by the project

Task 3 – Operations Analysis

Fehr & Peers will evaluate intersection operations, including level of service (LOS) and vehicle queues, for the study intersections during the AM and PM peak hours under the scenarios described in Task 2 using the 2010 Highway Capacity Manual methodologies. Based on traffic operations goals identified by the City of Emeryville, we will recommend measures to improve operations at the study intersections.

Fehr & Peers will also conduct a signal warrant analysis for currently unsignalized study intersections using the California MUTCD peak hour vehicular volume warrant (Warrant 3) for urban conditions to determine if the traffic added by the project would result in the need for signalization at these intersections. The signal warrants analysis will be conducted for the AM and PM peak hours under the study scenarios.

Fehr & Peers will analyze project impacts from daily traffic volumes on bicycle boulevards in the project vicinity and compare with the daily traffic volume standards established in the City of Emeryville Pedestrian and Bicycle Plan. This scope assumes daily traffic counts would be collected at up to five locations and would be calibrated using data collected in the past five years to estimate traffic volumes under typical conditions.

Our assessment will include a qualitative assessment of the bicycle, pedestrian, and transit systems within the study area and identify potential conflicts between the various travel modes. A safety assessment for each study intersection would be conducted as part of Task 7.

Task 4 – Vehicle Miles of Travel (VMT) Analysis

Consistent with SB 743 requirements, Fehr & Peers will conduct a VMT analysis to determine how the expected VMT generated per employee compares to regional and citywide averages. We will first conduct a VMT assessment based on screening criteria established in guidance from the Office of Planning and Research (OPR) to determine if the project can be presumed to have a less-than-significant impact on VMT. We will also conduct a detailed VMT assessment that estimates project daily VMT using the Alameda CTC Travel Demand Model and the trip generation estimates. Total daily VMT will be converted into VMT per employee estimates. Although local agencies have discretion to establish VMT-related significance criteria, OPR guidance specifies that a project generating 15 percent less than regional VMT would be considered less-than-significant.

Task 5 – Congestion Management Program Analysis

The Congestion Management Program (CMP) requires the use of the Alameda CTC Countywide Travel Demand Model to assess the impacts on regional roadways near the project site should the project generate more than 100 PM peak hour trips. Based on the project description, it is expected the project will generate more than 100 peak hour trips. We have included evaluation of up to 10 CMP roadway and freeway segments under 2020 and 2040 conditions. Additionally, we will assess the projects effect on the regional transit, bicycle and pedestrian system per the CMP Land Use analysis program. The finding of this analysis related to the automobile system will also be correlated with the findings from the VMT assessment

Task 6 – Site Analysis

Fehr & Peers will review the project site plan and the existing street network within one block of the project site to evaluate safety, access, and circulation for all travel modes in terms of the following:

- Site access for automobiles, bicyclists, and pedestrians, including access to the nearest transit stops
- Sight distance for pedestrians and automobiles at the project driveways
- Emergency vehicle access
- Vehicular safety, access, and circulation, including in the project parking facility
- Pedestrian safety, access, and circulation, including assessment of pedestrian facilities, such as crosswalk treatments, signal equipment, sidewalk widths and ADA considerations adjacent to the project site and to the nearest transit stops
- Bicycle safety, access, and circulation, including the bicycle boulevard on Overland Avenue and 62nd Street adjacent to the project and the streets connecting the project site to the nearest bicycle facilities
- Location, type, and amount of bicycle parking
- Adequacy of parking supply compared to City Code requirements
- Site access for trucks, including maneuverability to/from loading docks
- Need for and location of passenger, accessible (ADA) passenger, commercial loading zones
- Adequacy of bus stop infrastructure serving the site transit users

Task 7 – Collision History Analysis

Fehr & Peers will review five years of collision history (vehicle, pedestrian, and bicycle) at the study intersections, as well as the road segments adjacent to the project site. Fehr & Peers will review the collision data for all modes and identify if there are any crash patterns by collision type, severity, primary collision factor, and movement. We will also develop predicted crash frequencies for each study location based on Part C of the Highway Safety Manual. These predicted crash frequencies will be compared against the

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observed crash frequencies to identify if any of the study locations experience a higher than predicted number of collisions.

Based on the project's trip assignment, we will determine if the project's added traffic would contribute to a study location with a higher than predicted number of collisions, and if so, we will identify potential treatments. There may be multiple potential treatment options. We will document the Crash Modification Factor (CMF) for each treatment option (along with the CMF's standard error and quality rating). The analysis will focus on 4- and 5-star quality CMFs with 3-star quality applied under limited circumstances. CMF sources will include Part D of the Highway Safety Manual and the CMF Clearinghouse. We will provide a list of treatments at locations to address the higher than predicted number of collisions for the City to consider. If a treatment would affect intersection operations, we will evaluate the potential impact using the Synchro software.

Task 8 – Plan Consistency Analysis

Fehr & Peers will review the City of Emeryville's adopted Plans and Policies pertaining to transportation and assess to what extent the project is consistent with them. The documents that we will review will be identified at the project kick-off meeting.

Task 9 – Documentation and Meetings

The following documents will be prepared:

- Assumptions memorandum summarizing Task 1
- Transportation section of the environmental document
- Memorandum summarizing the non-CEQA analysis

This scope assumes the preparation of two administrative drafts and a final document.

Fehr & Peers will prepare for and attend up to five staff-level conference calls and one public meeting as part of this scope of work.

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FEHR & PEERS

LEVEL OF EFFORT AND SCHEDULE

Fehr & Peers will conduct the above scope of work on a time-and-materials basis for a fee not to exceed \$121,270, as shown in the table below. An additional 10% contingency would be reserved for effort outside of this scope of work, to be used upon receiving authorization from City staff.

Budget Estimate for Emerystation Overland TIA										
		Principal-in-Charge	Project Manager	Senior Engineer	Planner/Engineer	Graphics	Admin	Staff Hours	Other Direct Expenses	Task Budget
	Fehr & Peers Tasks/Billing Rate	\$280	\$160	\$175	\$145	\$150	\$140			
1	Trip Generation, Distribution, and Study Intersection Selection and Assumptions Memo	4	12	2	16	4	5	43	\$400	\$7,410
2	Intersection Counts and Volumes	2	10		24		5	41	\$5,000	\$11,340
3a	Operations Analysis (Intersection Operations)	2	4	20	200		28	254	\$1,900	\$39,520
3b	Operations Analysis (Signal Warrants)	1	1	4	20		3	29	\$200	\$4,660
3c	Operations Analysis (Bicycle Boulevards)	1	4		12		2	19	\$600	\$3,540
4	VMT Analysis	4	4	6	12		3	29	\$200	\$5,170
5	CMP Analysis	1	1	2	12		2	18	\$100	\$2,910
6	Site Analysis	4	16		16		5	41	\$300	\$7,000
7	Collision History Analysis	2	4	10	50		8	74	\$600	\$11,920
8	Plan Consistency Analysis	1	2		8		1	12	\$100	\$2,000
9a	Documentation and Meetings (CEQA Section)	4	20		8	2	4	38	\$300	\$6,640
9b	Documentation and Meetings (Non-CEQA Memo)	6	48		24	8	11	97	\$800	\$16,380
9c	Documentation and Meetings (Meetings)	4	8				2	14	\$100	\$2,780
	Total	36	134	44	402	14	79	709	\$10,600	\$121,270
									10% Contingency	\$12,127
									Total including Contingency	\$133,397

We can submit a draft study assumptions memo within three weeks of receipt of the fully executed contract, the final project description, and TDM plan (if available). An administrative draft transportation section and non-CEQA memorandum will be submitted within 16 weeks of receiving agreement on the study assumptions and receiving traffic count data, if applicable.

Please contact Jordan (j.brooks@fehrandpeers.com or 510-587-9429) with questions or if you need any additional information. We look forward to working with you on this project.

Sincerely,

FEHR & PEERS



Kathrin Tellez, AICP, PTP
Principal
P21-1029-OK



Jordan Brooks
Senior Transportation Planner



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **FEHR & PEERS**.

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**

\$1,000,000.00 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.