

City of Emeryville

INCORPORATED 1896

1333 Park Avenue. Emeryville, CA 94608-3517
t (510) 596-4300 | f (510) 596-4389

REQUEST FOR *Proposals*

FOR

Labor Standard Enforcement Investigations and Legal Services

Deadline for Submission: Wednesday, May 15, 2019 at 5:00 p.m.

Staff Contact Information:

April Shabazz, Management Analyst

City of Emeryville

Tel: 510-596-4316

ashabazz@emeryville.org

INTRODUCTION

This Request for Proposals (RFP) is being issued by the City of Emeryville, Economic Development and Housing Division to seek qualified consultant(s) to enhance its enforcement of all labor standards. City staff will evaluate all timely submissions in response to this RFP and competitively award contract(s) to bidders whose submissions are most responsive to the needs of the City's legal and enforcement staff.

BACKGROUND

Emeryville

Located at the foot of the San Francisco Bay Bridge, Emeryville is comprised of just 1.2 square miles of land north of Oakland and south of Berkeley. Emeryville is now a regional retail destination and headquarters for major high-tech and biotech corporations, with over 21,000 jobs. Approximately 3,500 to 4,000 of these jobs are in retail and food service businesses.

Key Labor Standards Highlights

Workplace Justice Standards for Large Hotels (Measure C) Chapter 32 of Title 5 Emeryville Municipal Code ("EMC")

On November 8, 2005, the electorate of the City of Emeryville adopted an ordinance ("Measure C") governing certain employment conditions for "Employees" working in hotels with more than 50 guestrooms. On August 19, 2008, the Emeryville City Council adopted Resolution establishing amended and restated regulations and procedures to implement Measure C.

Measure C establishes that no corporation or entity may operate a large hotel without annually obtaining a permit from the City which will be granted upon showing the following conditions:

- **Established a Minimum Compensation**
- **Established a Minimum Average Compensation of all employees during a calendar year**
- **Credit for Health Benefits**
- **Inflation Adjustments**

The rates established are upwardly adjusted annually no later than March 1, in proportion to the increase during the preceding calendar year based on the region's Consumer Price Index published by Bureau of Labor Statistics.

Minimum Wage Paid Sick Leave and Hospitality Surcharge Ordinance Chapter 37 of Title 5 of the EMC

The purpose and intent of Chapter 37 of Title 5 of the EMC ("Chapter 37") is to provide standards for minimum wages paid to employees, paid sick leave, and equitable

disbursement of hospitality service charges above and beyond the requirements of state law.

On June 2, 2015, the city council of the City of Emeryville adopted Chapter 37, which establishes a minimum wage, paid sick leave benefits, and payment of service charges to Hospitality Workers. Chapter 37 establishes a minimum wage in the City of Emeryville of \$14.82 per hour for large businesses (56 or more employees within the Emeryville city limits); and \$13.00 per hour for small businesses (55 or fewer Employees within Emeryville city limits) which began on July 2, 2016. The minimum wage thereafter increases yearly on July 1. Chapter 37 also requires employers in Emeryville to provide paid sick leave benefits to their Employees and requires that hospitality employers who collect service charges from customers to pay all service charges to their Hospitality workers. Currently, Emeryville has the highest minimum wage in the nation at \$15.69 for large businesses and \$15.00 for small businesses, increasing to \$16.30 and \$16.00 respectively on July 1, 2019.

Fair Workweek Ordinance *Chapter 39 of Title 5 of the EMC*

On November 1, 2016, the City Council adopted Chapter 39 of Title 5 of the EMC (“Chapter 39”), which became effective on July 1, 2017.

Chapter 39 is comprised of the following key provisions:

- Covered Employers

It applies to all retailers with 56 or more employees globally, and all fast food restaurants with 56 or more employees globally and 20 or more employees in Emeryville. This is estimated to include about 80 establishments affected by this ordinance with 2,100 employees in Emeryville (about 97% of the Emeryville retail and about 12% of the Emeryville restaurant workforce).

- Schedule Notice

Employers are required to post work schedules not less than two weeks in advance.

- Right to Decline Schedule Changes

Employees have a right to decline employer-initiated schedule changes which add previously unscheduled hours. The right to decline such changes applies to schedule changes that occur with less than 14 days’ notice to the employee.

- Predictability Pay

Employers are required to provide Employees:

- Predictability pay in the amount of one hour per changed shift for any employer-initiated schedule changes with less than 14 days' notice but 24 hours or more notice to the employee
 - Predictability pay in the amount of four hours or the number of hours in the employee's scheduled shift, whichever is less, for employer-initiated schedule changes with less than 24 hours' notice, when the schedule change reduces hours from the scheduled shift
 - Predictability pay in the amount of one hour for employer-initiated schedule changes with less than 24 hours' notice for all schedule changes that do not reduce hours
- Right to Rest

Employees have a right to decline to work hours that occur less than 11 hours after the end of the previous day's shift or during the 11 hours following the end of a shift that spanned two days ("Clopensing Hours"). Furthermore, Employers must compensate employees at one and a half times their regular rate of pay for Clopensing Hours when employees agree in writing to work Clopensing Hours.

- Offer of Hours

Covered Employers must first offer additional hours of work to existing part time employees before hiring new employees or contract employees. The offer of hours is to be extended if the part time employee is qualified to do the additional work as reasonably determined by the employer in good faith.

- Right to Request Flexible Arrangement

Employees have a right to request a flexible work arrangement. Such requests can include additional hours; changes in days, start or end times of shifts; increased predictability or stability; exchange of shifts with other employees; limitations on availability; job sharing arrangements; telecommuting; changes in work duties; or part-year employment. Employers are required to inform employees of this right, and are required to respond in writing within specified timeframes to employees' written requests for desired changes.

- Retaliation Prohibited

Retaliation against Employees for exercising any of the rights under Chapter 39.

SERVICES

The City augmented its labor standard program activities with consultants over the past two years; which has allowed an opportunity to establish a baseline of best practices and

a systematic approach to providing services to the community. It has been learned through this process that because of the complexity and interrelatedness of these been realized labor standards, there is a need in strengthening legal and enforcement capacity in order to maintain a unified and efficient service delivery model.

Therefore, the City is seeking qualified proposers to perform the investigation enforcement and legal services described below. **Proposers may submit a proposal for either the Labor Standards Investigation or Legal Services or both.** If the services require any specific license, that will be noted below. Proposers are also encouraged to consider creative approaches with the aim of effective service delivery to employers and employees affected by the ordinances. All work will be performed under the direction of City Staff from the Economic Development and Housing Division and City Attorney’s Office.

Service Area	Qualifications
Labor Standards Investigations	<p>General Overview</p> <p>Consultant will be expected to assist with a variety of labor investigations, ranging from simple and discrete investigations to complex investigations.</p> <p>The purpose of these investigations is to gather the evidence and to conduct the analysis necessary to determine whether any violation has occurred, and if so, to support the City’s enforcement action.</p> <p>Consultant may be asked to provide a recommendation as it relates to enforcement and resolutions of complaints and violations.</p>
	<p>Gather Evidence</p> <p>Demonstrated knowledge of key federal and state laws that may overlap with the City’s Labor Standards, such as, but not limited to, wage and overtime laws, and paid sick leave;</p> <p>Demonstrated ability to conduct in person and phone interviews as necessary to gather relevant information pertaining to an investigation and to obtain witness statements; must have access to translation services multiple languages primarily in Spanish and Chinese/Mandarin or Cantonese for verbal communication. Currently, the City provides written material in English, Spanish, Mandarin/Cantonese, Amharic, and Farsi;</p> <p>Demonstrated familiarity with various methods of financial reporting and general human resources operating procedures;</p> <p>Desirable for consultant to possess either a private investigator or admission to practice law in the state of California and in good standing.</p>

	<p><i>Analysis</i></p> <p>Demonstrated ability to gather, analyze, and summarize large amounts of information in written format;</p> <p>Demonstrated ability to generate spreadsheets and apply formulas in MS Excel across data;</p> <p>Analyze merits of complaint, interview employees, review payroll records and other financial documents, analyze evidence and prepare written reports;</p> <p>Demonstrated familiarity with various methods of financial reporting and general human resources operating procedures;</p> <p>Demonstrated forensic accounting experience highly desired.</p>
	<p><i>Enforcement</i></p> <p>Be able and willing to testify in either administrative hearings or in Court;</p> <p>Provide monthly status updates on cases and other assigned duties in a form agreed to by City and consultant;</p> <p>Provide monthly status updates on cases and other assigned duties in a form agreed to by City and consultant;</p> <p>Support city staff on strategic enforcement strategies and campaigns – support the City to develop innovative approaches to enforcement.</p>
<p>Legal Services</p>	<p>Must be admitted to the California Bar with active license and in good standing;</p> <p>Demonstrated experience in conducting and/supervising investigations in collaboration with enforcement team;</p> <p>Demonstrated experience in prosecuting code enforcement matters in an administrative setting, such as in front of a hearing officer or a legislative body, such as a City Council;</p> <p>Demonstrated experience in providing advice and counseling on interpretation and application of ordinances and regulations;</p> <p>Demonstrated experience in negotiating settlements;</p>

	<p>Experience with recovering City costs (including attorney’s fees) in code enforcement cases;</p> <p>Demonstrated experience in representing government agencies in lawsuits challenging administrative decisions;</p> <p>Demonstrated ability gathering information, including interviewing witnesses, analyzing that information, and summarizing large amounts of information in written format;</p> <p>Demonstrated ability to handle multiple projects simultaneously and to respond quickly to City staff requests;</p> <p>Demonstrated knowledge of key federal and state laws that may overlap with the City’s Labor Standards, such as, but not limited to, wage and overtime laws, and paid sick leave;</p> <p>Demonstrated knowledge of due process issues as they arise in administrative code enforcement matters;</p> <p>Demonstrated knowledge bankruptcy law as it impacts code enforcement by a local agency;</p> <p>Must not have a conflict of interest that would preclude prosecution of a labor standards code enforcement matter in front of the City Council for the City of Emeryville.</p>

SCHEDULE AND SUBMITTAL REQUIREMENTS

Issue Date	April 16, 2019
Deadline for submission of Questions	April 29, 2019
Mandatory Bidders Conference Date	May 3, 2019
Response to Questions	May 10, 2019
Proposal Due Date	May 15, 2019
Interview Panel Date	Week of May 27, 2019

Question Period

Questions should be submitted by email to ashabazz@emeryville.org. No questions will be answered by phone or in person, except at the Mandatory Pre-

Proposal meeting. Answers to the questions regarding the RFP will be emailed out to the mailing list of attendees of the pre-proposal meeting by May 10, 2019.

The City reserves the right to adjust the above schedule as necessary.

Submittal Contents and Format

Proposals must be received, and time stamped by the City Staff no later than Wednesday May 15, 2019 at 5:00pm.

Submittal

Proposal may be submitted by the following methods:

Hard copies must be mailed or hand delivered to April Shabazz, Management Analyst, Economic Development and Housing Division, 1333 Park Ave, Emeryville, CA 94608; Electronic Copies must be received by 5:00pm on the same day to ashabazz@emeryville.org.

Formatting

All proposals must be submitted on 8 1/2 X 11 paper, in 12 pt. font.

Submission should be no more than seven (7) pages excluding attachments. Submission of forms and work samples should be relevant to the requirements of this RFP.

Content

Cover Letter. Provide a written summary of the proposal outlining your approach to the project and demonstrating your qualifications. Specifically, provide in a clear and concise manner how your organization and staff qualify to perform requirements listed below. Not to exceed seven (7) pages, per service area selected.

Budget Proposal. Outline the estimated cost for each deliverable including but not limited to hourly rates, estimated hours available and any additional professional or material fees annually, and how consultant will assist in ensuring project stays within budget. Not to exceed two (2) pages per consultant.

Additional Documentation. Resumes/CVs, and References.

Copies. Proposers must submit four (4) collated packets in hard copy

EVALUATION OF SUBMITTALS

Selection Process Generally

Submittals will be reviewed by a panel from individuals with experience within and outside of the City; with recommendation to the City Manager and City Council for final approval based on the criteria outlined below.

Evaluation Criteria and Scoring

Criteria	Maximum Point Value
Qualifications. Demonstrated ability to satisfy the qualifications requirements as outlined in the selected service area (e.g., Labor Standards Investigations, Legal Services)	40
Experience and Capacity. Includes experience with municipal and regulatory service delivery; customer service and satisfaction; staff capacity and experience.	25
Project and Data Management. Ability to manage fiscal/accounting records; management of reporting on deliverables; proposed data management systems for case review; provide monthly case updates, and work with the City to stay within budget.	20
Communication Skills. Demonstrated experience collaborating with other entities and teams on projects and cases.	15
Total	100

GENERAL TERMS AND CONDITIONS

Errors and Omissions

Consultants are responsible for reviewing all portions of this Request. Consultants are to promptly notify the City, in writing, if the firm discovers any ambiguity, discrepancy, omission or other error in this request. Any such notification should be directed to the City staff contact person listed on the cover page promptly after discovery, but in no event, later than five (5) working days prior to the date for receipt of submittals.

Additional Questions

The City has an open question and answer period outlined in Section E. Please submit all questions no later than April 29, 2019.

Any questions regarding this request must be submitted in writing to the City staff contact person listed on the cover page at least ten (10) working days prior to the submittal deadline. The City may share the question(s) and its response(s) with all known consultants who are considering a response to this request.

Addendum

The City may revise this request prior to the submittal deadline. The City will communicate modifications to this request by issuing an addendum. The City may extend the submittal deadline in its sole discretion.

Additional Information

In the City's sole discretion, it may contact any, all or no consultant to seek additional information about a submittal. Such additional information may include requesting that the consultant meet with the selection committee, financial information, clarification on the submittal, etc.

No Contract

This request and the selection process shall in no way be deemed to create a binding contract, agreement or offer of any kind between the City and submitting consultant. If the City selects a consultant(s) pursuant to this request, any legal rights and obligations between the successful firms, if any, and the City will come into existence only when a written contract is fully executed by the parties, and the legal rights and obligations of each party shall at that time be only those rights and obligations which are set forth in the contract and any other documents specifically referred to in that contract.

No Costs to City

Each consultant submitting a response to this request agrees that it shall bear all costs and expenses associated with the preparation of the submittal, and the City shall not be responsible for any costs or expenses incurred by the consultant, under any circumstances.

Public Records

All submittals become the property of the City, regardless of whether the City enters into a contract with the consultant, and no submittals will be returned to a consultant. In accordance with California law relating to access to public records, the City may be

required to publicly disclose all submitted information and materials to third parties requesting such information. At the City's sole discretion, it may delay disclosure of submittals until negotiations with the selected consultant(s) has concluded, if such disclosure would compromise the City's negotiating position. If the submitting consultant claims that any submitted information constitutes a trade secret or is proprietary, the bidder shall identify the trade secret or proprietary information in the submittal. Pricing is not considered a trade secret or proprietary information.

Award

This request does not commit the City to award a contract. The City reserves the right to accept or reject any or all submittals, to negotiate a different proposal, to split the award, to waive irregularities, and technicalities, to alter the selection process in any way, to postpone the selection process for its own convenience at any time for any reason, to waive any defects or irregularities in any submittal, to issue a new Request at any time, or to hire any consultant it deems appropriate in its sole and absolute discretion within or outside of the evaluation process.

Protest

Should any proposer question or protest the determination made by the awarding entity (City Manager or City Council), such question or protest must be furnished in writing to the City Clerk within three (3) calendar days after the City notifies all proposers of its intent to select a consultant(s). Such question or protest must fully explain its basis, supported by all relevant evidence, and citations to laws and regulations. The writing must be signed by an authorized representative stating specific reason(s) for the objection or protest. Questions or protests that do not comply with this section will be rejected without further action.

Federal, State and Local Laws

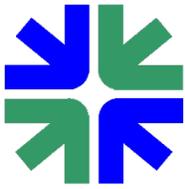
Any consultant executing a contract with the City will be required to comply with all applicable federal, state and local laws, including without limitation state Prevailing Wage Law (Cal. Labor Code, § 1720, et seq.) and the City of Emeryville's Minimum Wage, Paid Sick Leave, and Other Employment Standards (Emeryville Municipal Code Chapter 37) and Living Wage Ordinance (Emeryville Municipal Code Chapter 31), as applicable.

City Contract

A sample of the standard City professional services contract is attached as Attachment A for reference. By submitting a response to this request, the consultant represents that it is willing and able to execute the City's standard professional services contract, including but not limited to, the applicable insurance requirements. Any proposed modifications to the City Contract should be included in the response to the RFP.

Attachments:

Professional Services Contract (which includes insurance requirements set forth in Exhibit B)



PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (“Contract”) is effective as of this _____ day of _____, 2019 (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **COMPANY / CONTRACTOR NAME (INC, LLP, LLC...)** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for *Project Name and Brief Description*; 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.

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

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 **END DATE**. The Parties may, by mutual, written consent, extend the term of this Contract.

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 **FORTY FIVE THOUSAND DOLLARS AND NO CENTS (\$45,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in Exhibit A. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail

charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 *Assignment of Contract*

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

4.2 *Responsibility of Contractor and Indemnification of City*

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

The Project Manager is / Key Personnel 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. In the event that compliance with the Living Wage Ordinance is not required, the Contractor may still 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.

4.13.2 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 **\$50.00 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.

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

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

(Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

4.14.2 Registration

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

4.14.3 Labor Compliance Oversight

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

4.14.4 Workers’ Compensation

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

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

4.14.5 Event of Default

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

5. TERMINATION

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

6. NO PERSONAL LIABILITY

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

7. ENTIRE AGREEMENT

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

8. SUCCESSORS AND ASSIGNS

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

9. APPLICABLE LAW AND ATTORNEY’S FEES; VENUE

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

10. SEVERABILITY

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

11. BUSINESS TAX CERTIFICATE

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

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between *Project Manager* for the City and *Point of Contact* for the Contractor:

CITY	CONTRACTOR
<i>Project Manager, Title</i> Phone No.: 510-596-4300 E-Mail : <i>email</i> @emeryville.org	<i>Point of Contact, Title</i> Phone No.: 510-000-0000 E-Mail : <i>email</i> @contractor.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><i>Department Head, Title</i> <i>Street Address</i> Emeryville, California 94608 Phone No.: 510-596-4300 E-Mail: <i>email</i>@emeryville.org</p> <p><i>with a copy to:</i> <i>Project Manager, Title</i> <i>Street Address</i> Emeryville, California 94608 Phone No.: 510-596-4300 E-Mail: <i>email</i>@emeryville.org</p>	<p><i>CEO / President, Title</i> <i>Street Address</i> <i>City, State, Zip Code</i> Phone No.: 510-000-0000 E-Mail: <i>email@contractor.com</i></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 or scanned signature and shall accept the telecopied or scanned 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

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:

City Attorney

Dated:

_____, 2019

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

_____, 2019

COMPANY / CONTRACTOR NAME (INC, LLP, LLC...)

Type Name of Signatory, Title

(Signature)



EXHIBIT B
Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **COMPANY / CONTRACTOR NAME (INC, LLP, LLC...)**.

1. MINIMUM REQUIREMENTS

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

1.1 Minimum Scope of Insurance

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

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

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

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.
- General Liability (Construction Specific)**
\$2,000,000.00 per occurrence and \$4,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.
- Automobile Liability**
\$2,000,000.00 per accident for bodily injury and property damage.
- Professional Liability / Errors and Omissions**
\$2,000,000.00 per claim and aggregate.
- Workers' Compensation and Employer's Liability**
Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.
- Pollution Liability Insurance**
\$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

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

2. INSURANCE ENDORSEMENTS

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

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

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; 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.

Automobile Liability

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

Professional Liability Coverage

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

Workers' Compensation and Employer's Liability Coverage

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

Pollution Liability Coverage

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the 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. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such 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.