



CITY OF EMERYVILLE  
CALIFORNIA

Request for Proposals  
for  
Auditing Services

Deadline for Submission: **January 29, 2021 by 4:00 P.M.**

STAFF CONTACT INFORMATION:

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## 1. INTRODUCTION

The City of Emeryville is soliciting proposals from qualified certified public accounting firms to conduct annual independent audits of the City of Emeryville and its related operations, including the Emeryville Successor Agency, for the fiscal years ending June 30, 2021, 2022, and 2023, with options for extensions for fiscal years ending June 30, 2024 and 2025. Exercise of this option will be dependent upon performance and the City's desire to continue the engagement. These audits are to be performed in accordance with generally accepted auditing standards (GAAS), the provisions of the Federal Single Audit Act of 1984 (as amended in 1996), and U.S Office of Management and Budget (OMB) Uniform Guidance -2 CFR Part 200.

## 2. BACKGROUND

The City of Emeryville was incorporated in 1896. Emeryville is a full-service charter city providing police, fire (provided via contract with the Alameda County Fire Department), public works, development services (economic development, housing, planning and building), community services (child development, youth services, and adult services) and general administrative services (city manager, city clerk, city attorney, finance, human resources, and information technology). The City has operated under the Council-Manager form of government since 1984, with five City Council members elected at-large for staggered four-year terms. Annually, the City Council members select a Mayor and Vice-Mayor. The City Manager is responsible for administration of city affairs, day-to-day operations and implementation of council policies. The city council also appoints a City Attorney. The Emeryville Successor Agency is a legally separate entity, with members of the City Council serving as members of the Agency Board.

City Employees receive retirement benefits through the Public Employees Retirement System (PERS). There is currently one retired employee receiving stipends through the City Pension Plan which existed prior to the City's entry to the PERS system. The City obtains liability insurance coverage through the Bay Cities Joint Powers Insurance Authority and purchases property, earthquake and vehicle insurance through this pool.

Beginning in July 1998, the City adopted a two-year budget format. For the 2020-21 Fiscal Year, the General Fund portion of the Budget is \$46.2 million, with a total Budget of over \$100.5 million for all funds, including both the Operating the Capital Budgets. The next two-year cycle will be for the 2021-22 and 2022-23 fiscal years.

The City's most recent Comprehensive Annual Financial Report and two-year budget is available on the City's website.

## 3. PROPOSAL SCOPE

### Objective

To conduct the annual independent audit of the City of Emeryville's and Emeryville Successor Agency's financial transactions and to express an opinion on the fairness of the presentation of the City's financial statements. The scope of the general audit should encompass all active pronouncements of the Government Accounting Standards Board and Office of Management and Budget Circular A-133, *Single Audit Report* in accordance with the Office of Management and

Budget (OMB) Circular A-133, along with a component unit audit of the Emeryville Child Development Center, and any other new standards adopted during the term of this agreement.

## Scope of Services Required

The City of Emeryville desires the Auditor to express an opinion on the fair presentation of its General-Purpose Financial Statements in conformity with generally accepted accounting principles. The audit shall include an examination of all funds and account groups of the City of Emeryville and the Emeryville Successor Agency.

The Auditor shall be responsible for report preparation and editing. In addition, the Auditor will be responsible for the preparation of journal entries to properly record Defined Benefit Pension Plan expense, liability and deferred inflows and outflows of resources in accordance with the provisions of GASB 68.

## Anticipated Auditing Schedule:

Fiscal year end closing	June 30, 2021
Submittal of Initial Draft of Financial Statements	October 15, 2021
Completion of Final Draft of CAFR for Review by The City Council Finance Committee	November 30, 2021
Submission to Council for Approval	December 7, 2021
CAFR submitted by City for Award Consideration	December 24, 2021

## Basic Reports to be Issued by the Auditor

Following the completion of the audit of the fiscal year's financial statements and activities, the Auditor shall issue the following reports:

1. *Comprehensive Annual Financial Report (CAFR) including General Purpose Financial Statements and Independent Auditor's Report.* The Independent Auditor's Report shall express the Auditor's opinion on the fair presentation of the City's general-purpose financial statements in conformity with generally accepted accounting principles. The City will provide the transmittal Letter, Fund Descriptions, Management Discussion and Analysis (MD&A) and the Statistical Section to the Auditor. The City shall also provide any special printed materials (cover, tabs, and divider pages) to the Auditor. The Auditor shall be responsible for compiling and producing the draft and final CAFR. Auditor to provide ten (10) bound copies and one pdf master of the final bookmarked CAFR.
2. *Management Letter.* This letter shall include the Auditor's findings, Statements, observations, opinions, comments, or recommendations related to the systems of internal

- control, compliance with applicable laws and regulations and accounting systems, functions, procedures and processes. Auditor to provide three (3) bound copies and one bookmarked pdf master.
3. *Component Unit Financial Statements and Independent Auditor's Report for the Emeryville Successor Agency.* This includes a compliance audit of the Emeryville Successor Agency. Auditor to provide five (5) bound copies, one unbound master and one bookmarked pdf master.
  4. *Agreed Upon Procedures Performed Related to the calculation of the Gann Appropriations Limit* and render a confirmation letter annually to the City regarding compliance of the calculations pursuant to law. Auditor to provide five (5) bound copies and one bookmarked pdf master.
  5. *Single Audit Report* prepared in accordance with the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations, if required.* Auditor to provide five (5) bound copies and one bookmarked pdf master.
  6. *Independent Auditor's Report and Statement of Expenditures regarding Measure B Alameda County Transportation Improvement Authority (ACTIA) funding* in accordance with the Transportation Development Act (TDA). Auditor to provide five (5) bound copies and one bookmarked pdf master.
  7. *Independent Auditor's Report and Statement of Expenditures regarding Measure BB Alameda County Transportation Improvement Authority (ACTIA) funding* in accordance with the Transportation Development Act (TDA). Auditor to provide five (5) bound copies and one bookmarked pdf master.
  8. *Independent Auditor's Report and Statement of Expenditures regarding Vehicle License Fee Compliance Audit* funding in accordance with the Transportation Development Act (TDA). Auditor to provide five (5) bound copies and one bookmarked pdf master.
  9. *Independent Auditor's Report and Compliance Audit of the Emeryville Child Development Center* as required to comply with the terms of the State Department of Education grants for this program. Auditor to provide five (5) bound copies and one bookmarked pdf master.
  10. *Independent Auditor's Report and Compliance Audit of the Emeryville Housing Successor's (housing Successor)* as required with the type of compliance requirements described in the California Health and Safety Code sections applicable to California Housing Successor Agencies for the year ending June 30, 2021.

## Additional Reports to be Requested and Prepared by the Auditor at the City's Option

Due to the fluctuation in the receipt of special grant funds, the need for some reports will be based on whether the City meets the audit threshold for specific program, and/or whether the City received any funding under the program.

Also, the City may choose to have a different Auditor conduct the specialized audit related to the State Department of Education grant for the Emeryville Child Development Center. Depending on staff availability, the City may elect to obtain assistance preparing the following reports:

1. *Single Audit Report* prepared in accordance with the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations, if required*. Auditor to provide five (5) bound copies and one bookmarked pdf master.
2. *Annual Report of Financial Transactions to the State Controller, to be prepared and available for City staff review five (5) working days prior to the statutory submittal deadline.*
3. *Annual Street Report to the State Controller, to be prepared and available for City staff to review five working days prior to statutory submittal deadline.*
4. *Statement of Indebtedness, to be prepared and available for City Staff to review five working days prior to statutory submittal deadline.*
5. *Special Districts Financial Transactions Report*
6. *Transit Operators Financial Transactions Report*

## Supplemental Reports and/or Studies

Should there be other matters requiring audit reports or studies during the term of this engagement, the City and Auditor may enter into supplemental written audit agreements to accomplish those items. The scope of the study and associated costs shall be approved by the City prior to commencement of work.

## Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the Auditor's expense, for a minimum of three years following completion of the audit, unless the firm is notified in writing by the City of the need to extend the retention period. The Auditor will be required to make working papers available, upon request, to the following parties or their designees:

1. The City of Emeryville
2. Parties designated by the State or Federal governments or by the City of Emeryville as part of an audit quality review process
3. Auditors of entities of which the City of Emeryville is a sub-recipient of grant funds
4. State of California, Office of the Controller

In addition, the Audit firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

## Auditor's Responsibilities

1. The auditors will perform a financial and compliance audit to determine (a) whether the combined financial statements of the City fairly present the financial position and the results of financial operations in accordance with generally accepted accounting principles, and (b) whether the City has complied with laws and regulations that may have a material effect upon the financial statements. The Auditors will prepare and publish the comprehensive annual financial report (CAFR) in print and in electronic PDF format with bookmarking, if required by the City.
2. The auditors will examine the combined financial statements of the City as of and for the years ended June 30, 2021, 2022, and 2023. The engagement may be extended at the City's option, to include the years ended June 30, 2024, 2025.
3. The auditors will examine the City's internal accounting controls and accounting procedures and render written reports of their findings and recommendations to the City Manager.
4. If the auditors find indications of circumstances requiring an extension of procedures beyond the scope of the examination which would be sufficient under ordinary circumstances, the auditors will provide the City Manager all readily ascertainable facts relative to such extraordinary circumstances together with an estimate for the additional cost of investigating the same. Fees relating to such additional services are not contemplated as being within the scope of services to be performed under the paragraphs above and will be subject to approval by the City Council.
5. Prior to issuing their final reports, the auditors will meet with representatives of the Finance Department. All audit reports will be addressed to the City Manager.
6. The auditors may be consulted occasionally throughout the year as an information resource. The auditors may be asked to provide guidance on implementation of Governmental Accounting Standards Board (GASB) requirements, and specifics of federal and state regulations as they may affect local government accounting.
7. The auditors will compile and prepare reports as described in the above sections: "Basis Reports to be Issued by the Auditor" and "Additional Reports to be Requested and Prepared by the Auditor at the City's Option".
8. All working papers and reports must be retained as described in the above section: "Working Paper Retention and Access to Working Papers".

## City of Emeryville's Responsibilities

1. City staff will prepare the final closing of the books. The City will provide trial balances for all funds and groups as well as detailed subsidiary ledgers as produced by the City's computer system
2. City staff will prepare the confirmation letters. The audit firm will provide a list of confirmations and will provide an example format from which the City will prepare the letters.
3. City staff will be available to assist the audit firm by providing information, documentation, explanations and reconciliations of major assets and liability balances.
4. City staff will prepare comparative analyses of accounts for changes from prior year to current year.
5. City staff will prepare the financial schedules, transmittal letter, management discussion and analysis (MD&A), statistical tables, updates to the notes to the financial statements and all miscellaneous support documents. The City requests that the Auditor compile the documents into the final CAFR report.
6. The City will provide the auditor with reasonable workspace and seating. The auditors will also be furnished access to financial system data (in inquiry mode), access to scanned/electronic records, internet access and photocopying machines.

## **4. SCHEDULE AND SUBMITTAL REQUIREMENTS**

### **Selection Process and Criteria**

Proposals will be reviewed by a City staff committee, and the highest rated proposing firms will be invited to participate in the Finalist Interviews. Following this interview process, a firm and agreement will be recommended to the City Council for approval. The City of Emeryville reserves the right to accept or reject any or all proposals.

There will be no pre-proposal meeting.

All interpretation or correction, as well as any additional RFP provisions that the City may decide to include, will be made only as an official addendum that will be provided to all known bidders and it shall be the bidder's responsibility to ensure they have received all addendums before submitting a bid. Any addendum issued by the City shall become part of the RFP and will be incorporated in the proposal. The City will not be bound by oral responses to inquiries or written responses other than written addenda.

## Tentative Schedule for Selection Process

Issuance of Request for Proposals	December 23, 2020
Submittal Deadline	January 29, 2021
Screening of Proposals	Week of February 1 <sup>st</sup>
Finalist Interviews	Week of February 7 <sup>th</sup>
Recommendation to City Council	March 1, 2021

## General Requirements for Proposals

Three paper copies and one electronic copy of the proposal shall be submitted by 4:00 p.m. January 29, 2021. Electronic copy may be emailed to [bfarmer@emeryville.org](mailto:bfarmer@emeryville.org). It will be the proposer's responsibility to confirm receipt of the electronic copy is submitted by email, the City assumes no responsibility to search for misdirected or lost emails. No faxed information will be considered, nor accepted. Proposals shall be submitted to the following address:

City of Emeryville  
Finance Department  
Attention: Brad Farmer  
1333 Park Avenue  
Emeryville, CA 94608

The RFP is issued by the City of Emeryville, Finance Department. All questions regarding this RFP shall be submitted via email. Emailed questions and inquiries will be accepted from all prospective respondents in accordance with the terms and conditions of this RFP.

All questions shall be submitted on or before **January 19, 2021** and should be addressed as follows:

Brad Farmer, Finance Director, [bfarmer@emeryville.org](mailto:bfarmer@emeryville.org) (510) 596-4352 or  
Peggy Xu, Senior Accountant, [pxu@emeryville.org](mailto:pxu@emeryville.org) (510) 596-4326

All questions and responses will be answered and posted to the City's website in the Finance section.

## Minimum Content of Proposals

The Proposals should be submitted in two separate parts:

1. The Technical Proposal
2. The Cost Proposal

No dollar units or total cost bids should be in the technical proposals.

## Technical Proposal Requirements

All participating Consultants are requested to provide the following information in their response:

1. A Title page showing the firm's name; the name, address, email, and telephone number of the contact person.
2. A signed letter of transmittal briefly stating that the firm submitting the proposal -
  - a) is properly licensed to practice in California (including all of the assigned professional staff to the engagement);
  - b) agrees to perform all the work outlined in the City's RFP within the time periods established by the City and
  - c) understands that the firm's proposal is a firm and irrevocable offer through at least March 20, 2021.

The letter must contain a certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with the City.

3. Provide a copy of the Firm's most recent external quality review; include any findings discovered as part of that review and actions taken to correct those findings. The firm also must disclose information on the circumstances and status of any disciplinary action taken or pending against the firm during the pending or settled litigation within the past three (3) years.
4. A description of the size of the firm's governmental staff and the firm's experience with cities of a similar nature and scope. Emphasis should be placed on assignments undertaken within the past three years and on engagements undertaken by the personnel proposed to be assigned to this agreement.
5. Identify all personnel who will be assigned to work on this project and the firm's office in which they are each located. Include brief summaries of their background (including if they hold a current CPA license) and experience in auditing cities, as well as their assigned responsibilities under the proposal.
6. Provide an affirmative statement that the firm understands that the engagement partners, managers, and specialists may be changed **only** with the express prior written permission of the City. Other audit personnel may be changed at the discretion of the firm submitting the proposal, if replacements have substantially

the same or better qualifications or experience.

7. Describe how the Firm will approach this engagement. This may include a discussion of approach to selection of sample size, use of specialized software, analytical procedures, approach to audit of internal control structure, approach to determination of laws and regulations subject to audit test work, identification of any anticipated problems or special assistance required from City staff and format of the final report. This section should include an estimate of the amount of time (no dollar cost information) of each staff person assigned to each segment of the engagement.
8. Provide a schedule for completion of the work that will meet the City's requirements identified in the Scope of Work section of this RFP. This schedule should identify anticipated time frames for completion of each major phase of the engagement and should include any assumptions regarding turnaround time for staff review of information and documents.
9. Provide three references of your most representative projects, including the following information:
  - a) Name of Public Agency audited.
  - b) Name, Title, and Telephone Number of Contact Person
  - c) Size of General Fund Budget for the year most recently audited.
  - d) Size of Successor Agency Budget for most recent year
  - e) Brief description of the scope of the audit performed and the reports prepared by your firm

## Dollar Cost Proposal

The Cost Proposal should include all pricing information relative to performing the audit engagement as described in this Request for Proposal. The total all-inclusive maximum bid price is to contain all direct and indirect costs, including all out-of-pocket expenses. The Dollar Cost Proposal should show the breakdown of the total bid cost as described below:

1. Basic Reports Identified in Scope of Work Section. For each of the three initial fiscal years of the proposed engagement, provide a total proposed not to exceed amount for the basic reports. In addition, identify the breakdown of the total cost for each identified basic element. Include an estimate of the time for the completion of each element.

2. Additional Reports Identified in the Scope of Work Section. For each of these optional additional reports, provide an estimate of the time required and a proposed not to exceed cost for each of the three initial fiscal years.
3. Include an hourly fee quotation for all positions anticipated to be assigned to the engagement. Identify an estimate of any reimbursable or non-direct costs which would be charged for the engagement. Identify the proposed method of adjustment, if any, in the cost of service for the optional extension period.

## 5. EVALUATION OF SUBMITTALS

Proposing firms will be evaluated based on the selection criteria listed below. Firms meeting the mandatory elements will then be evaluated for technical qualifications. Cost will be considered but will not be the primary factor in the selection of the Audit firm.

### *Mandatory Elements of the Audit Firm:*

- a) The Audit firm is independent and licensed to practice in California.
- b) The firm has no conflict of interest about any other work performed by the firm for the City of Emeryville.
- c) The firm adheres to the instructions in this request for proposals on preparing and submitting the proposal.
- d) The firm submits a copy of its last external quality control review report
- e) The firm has a record of quality audit work.

### *Technical Elements:*

- a. Experience of the firm in performing audits of governmental agencies which are similar in scope, including experience in performing audits of successor agencies.
- b. Experience of specific professional personnel to be assigned to the engagement and the quality of the management support personnel to be assigned to supervise and guide the engagement.
- c. Approach to audit engagement and firm resources available for timely completion of the audit and the required reports.
- d. Responsiveness to proposals to this request for proposals, understanding of the engagement and the City's needs.
- e. References from similar engagements.

## 6. GENERAL TERMS AND CONDITIONS

### Errors and Omissions

Audit firms are responsible for reviewing all portions of this Request. Audit firms are to promptly notify the City, in writing, if the firm discovers any ambiguity, discrepancy, 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

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 audit firms 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 audit firm(s) to seek additional information about a submittal. Such additional information may include requesting that the audit firm 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 audit firm. If the City selects an audit firm(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 audit firm 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 audit firm, under any circumstances.

## Public Records

All submittals become the property of the City, regardless of whether the City enters a contract with the audit firm, and no submittals will be returned to an audit firm. 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 audit firm(s) has concluded, if such disclosure would compromise the City's negotiating position. If the submitting audit firm 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 audit firm it deems appropriate in its sole and absolute discretion within or outside of the evaluation process.

## Federal, State and Local Laws

Any audit firm 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 audit firm 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. In addition, the audit firm selected must have a City of Emeryville business license while conducting any work under this contract for each year of the contract term.

### **7. ATTACHMENTS:**

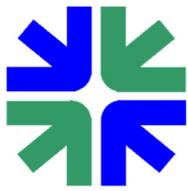
- Professional Services Contract

## **8. DISCRETION AND LIABILITY WAIVER**

The City reserves the right to reject all proposals or to request and obtain, from one or more of the auditing firms submitting proposals, supplementary information as may be necessary for City staff to analyze the proposals pursuant to the auditor selection criteria contained herein.

The City may require firms to participate in additional rounds of more refined submittals before the ultimate selection of an auditing team is made. The rounds could encompass revisions of the submittal criteria in response to the nature and scope of the initial proposals.

The Auditor, by submitting a response to this RFP, waives all right to protest or seek any legal remedies whatsoever regarding any aspect of this RFP. It is the City's intent to choose the firm that is most qualified for the solicited projects.



**PROFESSIONAL SERVICES CONTRACT**

**THIS PROFESSIONAL SERVICES CONTRACT** (“Contract”) is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **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 Auditing Services for the City and Successory Agency; 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.

##### **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.

#### 4.13.5 Minimum Wage and Paid Sick Leave

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

### **4.14 California Labor Requirements**

#### 4.14.1 Prevailing Wage Requirements

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

employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

#### 4.14.2 Registration

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

#### 4.14.3 Labor Compliance Oversight

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

#### 4.14.4 Workers’ Compensation

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

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

#### 4.14.5 Event of Default

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

### 5. **TERMINATION**

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

### 6. **NO PERSONAL LIABILITY**

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

### 7. **ENTIRE AGREEMENT**

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

**8. SUCCESSORS AND ASSIGNS**

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

**9. APPLICABLE LAW AND ATTORNEY’S FEES; VENUE**

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

**10. SEVERABILITY**

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

**11. BUSINESS TAX CERTIFICATE**

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

**12. NOTICES**

**12.1 Communications Relating to Daily Activities**

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

CITY	CONTRACTOR
<b>Project Manager, Title</b>	<b>Point of Contact, Title</b>
Phone No: <b>510-596-4300</b>	Phone No: <b>510-000-0000</b>
E-Mail : <b>email@emeryville.org</b>	E-Mail : <b>email@contractor.com</b>

### 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</i>@contractor.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, INCLUDING FEDERAL OR STATE REQUIREMENTS, IF APPLICABLE

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

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

*SIGNATURES ON FOLLOWING PAGE*

**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:

\_\_\_\_\_, 2020

**CITY OF EMERYVILLE**

\_\_\_\_\_  
Christine S. Daniel, City Manager

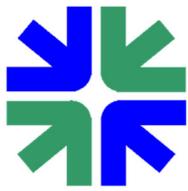
Dated:

\_\_\_\_\_, 2020

**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.

OR

#### Construction Specific

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

### Automobile Liability

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

### Professional Liability / Errors and Omissions

**\$2,000,000.00** per claim and aggregate.

### Workers' Compensation and Employer's Liability

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

### Pollution Liability Insurance

**\$2,000,000.00** per occurrence and **\$2,000,000.00** aggregate.

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

## 2. INSURANCE ENDORSEMENTS

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

□ **General Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

□ **Automobile Liability**

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

□ **Professional Liability Coverage**

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

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

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

**☐ Pollution Liability Coverage**

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