



City of Emeryville
CALIFORNIA

City Clerk's Office

**REQUEST FOR PROPOSALS
RFP CC2016-01-1**

**RECORDS MANAGEMENT
IMPROVEMENT PLAN**

PROPOSAL DUE DATE:

Monday, May 16, 2016
TIME: 3:00 p.m.

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PART I

1.0 **GENERAL**

The City of Emeryville City Clerk's Office intends to enter into an agreement with a qualified consultant to provide records and information management expertise in the implementation of City's Records Management Improvement Plan.

1.01 **MINIMUM REQUIREMENTS**

Proposals that do not meet the following minimum requirements shall be deemed non-responsive and will not be considered.

1. Three (3) copies of the proposal printed double-sided.

The City will not accept a proposal if:

- A. Any of the RFP forms are left blank or are materially altered;
- B. Any document or item necessary to the proposal is incomplete, improperly executed, indefinite, ambiguous, or is missing.

Additionally, factors such as, but not limited to, the following may also disqualify a proposer without further consideration:

- A. Evidence of collusion among proposers;
- B. Any attempt to improperly influence any member of the Evaluation Panel;
- C. A proposer's default under any type of agreement which resulted in the termination of that agreement;
- D. Existence of any pending litigation between proposer and the City.

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications.

1.02 INVITATION TO SUBMIT A PROPOSAL

A proposal shall be submitted no later than **May 16, 2016 at 3:00 p.m.** to

Nanci Lima
City of Emeryville
City Clerk
1333 Park Avenue
Emeryville, CA 94608-3517

3 paper copies of the proposal shall be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside "*RFQ 16-01-1: Proposal for: Records Management Improvement Plan*". Any proposal received after the due date and time cannot be accepted and will be rejected and returned to the proposer unopened. Therefore, the envelope must also have a return address on the outside.

1.03 CONSEQUENCE OF SUBMISSION OF PROPOSAL

- A. The RFP does not commit the City to pay any costs incurred in the submission of a proposal or in making any necessary studies or designs for the preparation thereof, nor the purchase or contract for the services.
- B. Statistical information contained in this RFP is for informational purposes only. The City shall not be responsible for the complete accuracy of said data.

1.04 ACCEPTANCE OR REJECTION OF PROPOSAL

The Agreement shall be awarded to the proposer whose proposal most closely satisfies the needs of the City and is deemed to be most advantageous to the City. The City reserves the right to accept or reject any item or group(s) of items of a proposal. The City also reserves the right to waive any minor informality or irregularity in any proposal. Additionally, the City may, for any reason, decide to reject all proposals to this RFP and not enter into an Agreement with any proposer.

1.05 INQUIRIES AND/OR CLARIFICATIONS

Any requests for clarification of the RFP shall be made **IN WRITING either by post or by e-mail (to nlima@emeryville.org) by Wednesday, May 4, 2016** and delivered to:

City of Emeryville
City Clerk
1333 Park Avenue
Emeryville, CA 94608-3517
ATTN: Nanci Lima

Any City response to a request for clarification by a proposer will be made in the form of an addendum to the RFP, will be sent to all parties to whom the RFQ has been issued not later than 5 business days prior to the due date for receipt of the proposal and will become a part of the RFP. The proposer should await responses to inquiries prior to submitting a proposal.

Oral responses are not binding on the City. Only responses and clarification issued via a written addendum shall be binding to the City.

1.06 PUBLIC RECORD: PROPOSALS BECOME PROPERTY OF CITY

Responses to this RFP become the exclusive property of the City. At such time as the City Clerk's Office recommends a proposer to the City Council, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act, any applicable law, or by court order. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary," shall be regarded as nonresponsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Emeryville may not be in a position to establish that the information which a proposer submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary", the City will provide the proposer who submitted the information with reasonable notice to allow the proposer to seek protection from disclosure by a court of competent jurisdiction.

1.07 INSTRUCTIONS TO PROPOSERS

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. No limitation on the content of the proposal is intended in these instructions and inclusion of any pertinent data or information is permitted.

Proposal shall provide responses directly corresponding to and numbered identically to each and every numbered paragraph contained in **Part 2 – Specifications and Requirements**. All responses must be complete and unequivocal. Please use "comply" or "do not comply". When indicating "do not comply", provide an explanation as to why or how you do not comply. In instances where a response is not required, or

where material is not applicable to the proposal, a response such as “no response required”, or “not applicable” is acceptable. All pages are to be consecutively numbered.

The proposal shall be constructed with the Proposer Background Questionnaire first, thereafter following in the same order as the RFP.

A proposal and all attachments shall be in English and complete and free of ambiguities, alterations, and erasures. It shall be executed by a duly authorized officer or agent of proposer. In the event of conflict between words and numerals, the words shall prevail.

Proposals are to be typed and prepared on both sides of 8-1/2" x 11" paper. **Do not use hard cover loose-leaf binders for proposals. Use cover page and staple in upper left hand corner or with a GBC binding.**

The following shall be included with the proposal:

- a) Exhibit A: Proposal Form
- b) Exhibit B: Proposer Background Questionnaire: Complete and fully executed
- c) Exhibit C: Insurance Requirement Form: Complete and fully executed
- d) Exhibit D: A Copy of the City’s Professional Services Agreement
- e) Detailed Management Plan
 - (a) Proposer should describe the functional and/or organizational structure of overall organization.
 - (b) Describe the Staffing plan the Proposer intends to employ in order to provide the required services. Identify Project Leader and major participating consultants: include resumes, proposed project assignments.
 - (c) Outline background, past experience and organizational qualifications that enable Proposer to provide the required services. Focus on municipal records experience, integrating records policies and procedures and electronic systems.
 - (d) Describe the technical approach for providing all the services included in this RFP. Include a proposed work plan and budget. Please submit:
 - breakdown by proposed targets
 - estimate budget/hours for each target
 - describe approach
 - (e) Any innovative management methods to increase effectiveness of the operation should be described, as well as their projected value to the overall operation.
 - (f) Samples of work:

- Example(s) of procedural manual (Materials will be returned)
Methodology of training (Any training materials will be returned)
(g) Additional information: Any other relevant information that supports the proposal.

1.08 PROPOSER CONTACT

Proposer shall provide the name, address, telephone and FAX number of an individual in their organization to whom notices and inquiries by the City should be directed as part of this proposal.

Name:

Address:

Telephone #:

E-Mail #:

FAX #:

1.9 EVALUATION PROCEDURE AND CRITERIA

The evaluation panel will consist of City technical and management personnel and others designated by the City. This panel will evaluate the proposals based on criteria listed below:

- 1) Quality of proposed service;
- 2) Cost to the City;
- 3) Location of Contractor in relation to the work required;
- 4) Capabilities and expertise of the Contractor;
- 5) Capacity of the Contractor to perform the service;
- 6) Responsibility of the Contractor;
- 7) Past service record of the Contractor;
- 8) References from other companies served by the Contractor;
- 9) Council policies, if applicable,

Proposers may be interviewed regarding specific areas of their proposals, as part of the evaluation process.

1.10 CITY BUSINESS LICENSE

Successful Proposer(s) shall obtain, at its own expense, a City Business License Tax Certificate at time of contract award. Contact Finance/Treasury at (510) 596-4352 to determine costs.

1.11 CITY PROFESSIONAL SERVICES AGREEMENT

The successful proposer shall be expected to enter into the City's standard Professional Services Agreement. The form of the agreement is attached as Exhibit D.

PART II
SPECIFICATION AND/OR REQUIREMENTS

NOTE: Where the word “shall” or “required” appears, proposers may not take an exception.

City of Emeryville Records Management Improvement Plan

Project Overview:

The City’s records are in various stages of organization; and recognize that this is a multi-year project which will target the following:

- A comprehensive Records Management Needs Assessment & Implementation Plan
- Active records management program implementation
- Active Records Management System for all City departments
- Cost effective onsite Inactive Records Storage System
- Development of a strategy for the integration of records processes in the further use of electronic records (Laserfiche) and other automated systems
- Training staff in system maintenance and procedures including manuals and reference guides

As part of the initial phase of the City’s Records Management Improvement Plan the City has already contracted for an Update to the Records Retention Schedule and creation of a Uniform Classification Index.

This request for qualifications is seeking to establish a qualified list of consultants who can best fulfill the targets.

The City:

The City of Emeryville, a California charter city, has a strong council/city manager form of government. Founded in 1896, Emeryville was a thriving industrial town until the 1990’s, when the City began its transformation into a modern mixed use urban city. The current population of the City is over 10,570. There are 7 departments in the City, several specialized offices, and the Successor Agency managed by the municipal government. Approximately 152 employees work for the City.

While many city offices are housed at City Hall, other departments are housed in various dedicated structures and sites, such as the Police Department, Emeryville Community Center for Life, Fire Department, Child Development Center, and the Corporation Yard.

The Records Program:

The City’s Records Management Improvement Plan Project is coordinated through the City Clerk’s Office. The City is currently in the process of updating the Records Retention Schedule and there is currently a hold on the destruction of all records.

Most of the inactive records, approximately 1,700 boxes, are stored in an offsite storage facility. In addition there are inactive records being kept within various departments. While the bulk of the records are in paper format, there are materials maintained in tape or electronic media.

The City is developing the use of computerized systems and is pursuing the use of imaging (Laserfiche) and other technology. The Information Technology Department is currently working with the City Clerk's Office to develop long term strategies in approaching the maintenance and use of the City's information. The City has both internet and intranet sites, and is working toward putting more direct public interaction, filing, and contact via website access.

Records Management Improvement Plan targets:

Consultant(s) shall work in concert with the City Clerk's office. They shall work directly under the management of the City Clerk staff; the City Clerk and staff will coordinate and supervise the project. Consultants may be working with or be in contact with departmental record coordinators and liaisons, Information Technology, Attorney's Office and other City Staff. They may also be in contact with other agencies and vendors on behalf of the City of Emeryville as part of this contract.

The following items are proposed targets for the Records Management Improvement Plan. These may be adjusted as needed:

1. Shall recommend revisions to the City records policies.
2. Shall develop procedural manuals and related forms; may provide assistance with staging on the City Intranet access.
3. Shall develop historic records program policies and procedures.
4. Shall develop vital records program policies and procedures. (tentative)
5. Shall train Records Management staff, Departmental Record Coordinators, Records Liaisons and other City staff on the use of retention schedules, records practices, etc.
6. Shall assist in the organization of the records imaging component (Laserfiche) with Information Technology

Qualifications:

- Demonstrated experience in development and revision of governmental records management systems, particularly municipal/local government.
- Demonstrated experience in the use of retention schedules, including training and implementation
- Demonstrated experience in developing and implementing historical and vital records programs
- Demonstrated experience in the application of informational technology to Records Management; knowledge and analysis of workable and compliant software and hardware systems.
- Ability to work in concert and under direction of City staff
- Able to train and instruct a wide range of employees.
- Able to generate and maintain budget and schedule.

EXHIBIT A
PROPOSAL FORM

Proposer

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Contact person, title, telephone, e-mail and fax number:

PROPOSAL FORM
-Continued-

PROPOSER'S REPRESENTATIONS

Proposer understands, agrees, and warrants:

1. That Proposer has carefully read and fully understands the information that was provided by the City to serve as the basis for submission of this proposal to provide records management expertise and services in the implementation of the second phase targets of the City's Records Management Improvement Plan.
2. That Proposer has the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
3. That this Proposal may be withdrawn by requesting such withdrawal in writing ten (10) calendar days prior to the date that the proposal is due, but may not be withdrawn after the due date for a period of ninety (90) calendar days .
4. That all information contained in the proposal is true and correct to the best of Proposer's knowledge.
5. That Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.
6. That proposer did not receive unauthorized information from: Any City staff member, or Consultant during the Proposal period except as provided for in the Request for Proposal package, or in the addenda thereto.
7. That by submission of this proposal, the Proposer acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer and Proposer hereby grants the City permission to make said inquiries, and to provide any and all requested documentation in a timely manner.

PROPOSAL FORM
-Continued-

PROPOSER'S SIGNATURE

No Proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

1. If Proposer is an INDIVIDUAL, sign here (include a notarized affidavit attesting to the authenticity of said signature):

Date _____

Proposer's Signature

Proposer's Typed Name and Title

2. If Proposer is a PARTNERSHIP or JOINT VENTURE, at least two (2) Partners or each of the Joint Venturers shall sign here (include a notarized affidavit attesting to the authenticity of said signatures):

Partnership or Joint Venture Name (type or print)

Date: _____

By: _____
Member of the Partnership or Joint Venture (signature)

Date _____

By: _____
Member of the Partnership or Joint Venture (signature)

3. If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

_____ and

Title

Title

of the corporation named below; that they are designated to sign this Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Title: _____

**EXHIBIT B
PROPOSER BACKGROUND QUESTIONNAIRE**

All information requested in the Questionnaire shall be furnished by the proposer, and shall be submitted with the proposal. Statements shall be complete and accurate and in the form requested. Omission, inaccuracy or misstatement may be cause for the rejection of a proposal.

1. Name of proposer exactly as it is to appear on a management services agreement and address which proposer would designate under the Notice provision of the agreement:

2. Proposer, if selected, intends to carry on the business as Individual (), Partnership (), Joint Venture (), Corporation (), Other (): If "Other" attach explanation.

3. If a partnership or joint venture, attach a copy of the partnership agreement or joint venture agreement and identify the participants:

A.	NAME	ADDRESS	SHARE
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

B. Date of Organization: _____

C. General or Limited Partnership: _____

(if applicable)

Agreement Recorded: _____
County
State
Date

D. Registered in California? _____ If so, when? _____

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

4. If a corporation, answer the following:

A. When incorporated: _____

B. In what state: _____

C. Authorized to do business in California? _____

If so, what date: _____

D. Name, address, years in the corporation, and percentage of stock held by the following officers:

President: _____ Years: _____ Stock %: _____

Vice-Pres: _____ Years: _____ Stock %: _____

Secretary: _____ Years: _____ Stock %: _____

Treasurer: _____ Years: _____ Stock %: _____

Other: _____ Years: _____ Stock %: _____

E. Name, address and percentage of stock held by each Member of the Board of Directors:

Chairman: _____ Stock %: _____

Member: _____ Stock %: _____

Member: _____ Stock %: _____

Member: _____ Stock %: _____

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

F. Name, address and shares of stock held by other principal stockholders: (A Principal Stockholder is defined as a stockholder who holds 10% or more of standing stock of the corporation).

Total capitalization: \$_____

Amount of capital stock subscribed: \$_____

Amount paid in: \$_____

5. Have you ever had a bond or surety denied, canceled, or forfeited?

YES () NO () If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture in an attached statement.

6. Have you ever declared bankruptcy or been declared bankrupt?

YES () NO () If yes, state date, court jurisdiction, docket number, amount of liabilities and amount of assets.

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

7. Have any agreements held by you for Records Management or related consultations ever been canceled?

YES () NO () If yes, give details.

8. Have you ever been sued by any other jurisdiction or contractor for issues pertaining to fee payment, performance, or other issues relating to Records Management or other related consultations?

YES () NO () If yes, give details.

9. Are you currently engaged in merger or acquisition negotiations, or do you anticipate entering into merger or acquisition negotiations within the time period of this Request for Qualifications?

YES () NO () If yes, give details. Attach copy of such agreement(s).

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

10. Are you now engaged in any litigation which does now or could in the future affect your ability to pay fees or perform under the Agreement?

YES () NO () If yes, give details.

11. What is the duration and extent of your experience in Records Management and related consultant work? Please specify Records Management experience with governmental agencies. Experience must reflect local office as well as overall organization's experience (i.e., if your local office is part of a larger group, nationwide).

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

12. Submit at least 3 persons, firms and/or governmental bodies, with whom you currently have arrangements or agreements for records management development, retention schedule development, records and information technology integration, or other related RIM components.

Provide contact person's name and telephone number.

- 12a. Submit at least 3 persons, firms and/or governmental bodies with whom you have had arrangements or agreements that are now canceled (organizations that are no longer active customers of your firm). Provide contact person's name and phone number for each organization.

13. State number of persons employed by you who are engaged in records management services. Indicate what percentages of these employees are employed locally and what percentage of those employees would directly service an account resulting from this request for proposal. Of the employees indicated, what percentage are management and what percentage are operational?

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE

-Continued-

14. References: Give names, addresses and telephone numbers of at least 3 business references, including at least one from banking sources, regarding the proposer's business record.

15. Successful proposer will extend contract prices as quoted herein to other Government Agencies:

PLEASE SPECIFY: YES () NO ()

EXHIBIT B – PROPOSER BACKGROUND QUESTIONNAIRE
-Continued-

The undersigned hereby declares under penalty of perjury that all statements, answers and representations made in this questionnaire are true and accurate, including all supplementary statements hereto attached. In the case of a corporate proposer, the signature of one duly authorized representative is sufficient.

Signature

(Please Print or Type name)

Title

Signature

(Please Print or Type Name)

Title

EXHIBIT C
INSURANCE REQUIREMENT FORM

INSURANCE REQUIREMENTS:

Proposer has read the insurance requirements contained in Appendix A and acknowledges that insurance will be made a part of the Agreement and warrants that Proposer has or will acquire the required insurance coverage by execution of the Agreement.

Date:

Signature

Title

Company Name

EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is effective as of this ____ day of _____, 20__, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **[CONSULTANT’S NAME]** (“Consultant”), collectively referred to as the “Parties.”

WITNESSETH THAT:

WHEREAS, the City desires to **[DESCRIBE PROJECT]**; and

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

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and,

WHEREAS, the Consultant desires to provide such services; and,

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

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

[A complete Project Description is described in (“Scope of Work, “Proposal,” etc.), attached as Exhibit A.

B. Services

The services to be completed under this Agreement (“Services”) are:

[described in Exhibit A]

C. Schedule and Completion Date:

The services to be provided by Consultant under this Agreement shall commence on **[COMMENCEMENT DATE]** and terminate on **[TERMINATION OR END DATE]**

II. WORK CHANGES

- A. The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.
- B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.
- C. The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section III.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

III. COMPENSATION AND METHOD OF PAYMENT

- A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.
- B. The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **[SPELL OUT DOLLAR AMOUNT (\$_____)]** except as outlined in Section II.C., above. The compensation for Services performed shall be computed based upon **[an hourly rate of \$_____ OR as set forth in Exhibit ____]**. 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.

IV. COVENANTS OF CONSULTANT

A. Assignment of Agreement

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

B. Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant 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 Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant 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 consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. 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 Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

C. Independent Contractor

The Consultant 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 Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

D. Insurance

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.
2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:
 - a. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
 - b. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
 - c. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- d. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's initials)

- 3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.
- 4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverage.

- i. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as *additional insured* and is not acceptable.

- ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
- iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
- vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
- vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

c. All Coverages

- i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.
5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.
6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete,

certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.
8. Claims-Made Policies. Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

E. Records, Reports and Audits

1. Records
 - a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. 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 Agreement. 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 Agreement shall be clearly identified and readily accessible.
2. Reports and Information: Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

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 Agreement. The Consultant 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 Agreement.

F. Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

G. Confidentiality

The Consultant 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 Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

H. Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant 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.

I. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant 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 Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

J. Key Personnel

[NAME OF PROJECT MANAGER OR All of the individuals listed in Exhibit A are] necessary for the successful prosecution of the work due to **[his/her/their]** unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant 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 Consultant's obligations under this Agreement and shall be grounds for termination.

K. Authority to Contract

The Consultant 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 Consultant to the terms of this Agreement, if applicable.

L. 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 Consultant ("Materials") shall be an 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 Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant 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 Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

M. Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant 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) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

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

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant 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 Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.44 per hour (as of July 1, 2015, 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.

N. Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to insure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

1. Hours of Labor: Eight hours labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.
2. Labor Non-Discrimination: Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.
3. Prevailing Wages: Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained on-line at <http://www.dir.ca.gov>. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates

to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4. Payroll Records: Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.
 - a. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
 - b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the

requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.

- c. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- d. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- e. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.
- f. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

- 5. Apprentices: Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the

regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 17777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

6. Workers' Compensation: Pursuant to the requirements of section 1860 of the California Labor Code, Consultant 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 Agreement, Consultant 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."

7. Event of Default: Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

V. TERMINATION

- A. The City shall have the right to terminate this Agreement 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 Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant 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 Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.

- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VI. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant 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 Consultant or successor or on any obligation under the terms of this Agreement.

VII. ENTIRE AGREEMENT

This Agreement 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 Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

VIII. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

IX. 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 Agreement, 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 Agreement 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.

X. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. 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 Agreement shall remain in full force and effect to the extent possible.

XI. BUSINESS LICENSE

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

XII. NOTICES

A. Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between [_____] for the City and [_____] for the Consultant.

B. Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

CONSULTANT

**[PROJECT MANAGER]
1333 Park Avenue
Emeryville, California 94608
Phone No. (510) Phone Number
Fax No. (510) Fax Number
E-Mail Address**

[NAME, ADDRESS, PHONE #]

XIII. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved as to form:

Michael A. Guina, City Attorney

CITY OF EMERYVILLE

Dated: _____, 20__

Carolyn Lehr, City Manager

CONSULTANT

Dated: _____, 20__

By: _____

Its: _____

INSURANCE REQUIREMENTS FOR CONTRACTORS

Contractor shall 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 hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

1. **Requirements:** The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.
2. **Minimum Limits of Insurance:** Consultant shall maintain limits no less than:
 - a. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
 - b. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
 - c. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.
 - d. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's initials)

3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.
4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:
 - a. General Liability and Automobile Liability Coverage.
 - i. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as *additional insured* and is not acceptable.
 - ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
 - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
 - iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

- vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
- vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

c. All Coverages

- i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.
6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.
7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.
8. Claims-Made Policies. Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.