

Service Provider Agreement

THIS AGREEMENT, entered into this 1st day of July, 2014, by and between CITY OF ALAMEDA, a municipal corporation (hereinafter referred to as "City"), and COMPANY, a California corporation, whose address is ADDRESS, hereinafter referred to as the Provider, in reference to the following:

RECITALS:

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. Provider is specially trained, experienced and competent to perform the special services that will be required by this Agreement.

C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Provider desire to enter into an agreement for Ongoing Cleaning and Maintenance on Park Street, Webster Street, and Marina Village, in accordance with the Request for Proposal, which is incorporated herein by reference and includes all attachments.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM:**

The term of this Agreement shall commence on the 1st day of July 2014, and shall terminate on the 30th day of June 2015, unless terminated earlier as set forth herein.

This contract may be mutually amended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the Public Works Director, based, at a minimum, upon satisfactory performance of all aspects of this contract. The Public Works Director may submit written notice that the contract is to be extended at the same terms as the existing contract. The unit prices for any contract amendment(s) to this agreement shall be adjusted by the Consumer Price Index, San Francisco Bay Area, found here: <http://www.bls.gov/ro9/cpisanf.htm>.

2. **SERVICES TO BE PERFORMED:**

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. The Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to perform all tasks included therein.

3. **COMPENSATION TO PROVIDER:**

Provider shall be compensated for services performed pursuant to this Agreement in the amount and manner set forth in Exhibit A and incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of said City, to be taken from Fund 275, Programs 275200, 275300, 275400, and 275600.

Payment will be made by the City in the following manner: During the first week of each month, Provider shall submit a written estimate of the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule in Exhibit A unless mutually agreed upon in writing. Extra work must be approved in writing by the City prior to performance and shall be paid on a Time and Material basis using Exhibit A schedule.

Total compensation under this contract shall not exceed \$XX,XXX.

4. **TIME IS OF THE ESSENCE:**

Provider and City agree that time is of the essence regarding the performance of this Agreement. The Provider shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subProviders due to such causes; provided that the Provider shall, within one day from the beginning of such delay, notify the City in writing of the causes of delay. The City shall ascertain the facts and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

5. **STANDARD OF CARE:**

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

6. **INDEPENDENT PARTIES:**

City and Provider intend that the relationship between them created by this Agreement is that of employer-independent Provider. The manner and means of conducting the work are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Provider. Payments of the above items, if required, are the responsibility of Provider.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA

or other federal, or state rules and regulations. Provider shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. **NON-DISCRIMINATION:**

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

Provider shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, and employees ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole or active negligence or willful misconduct of Indemnitees.

10. **INSURANCE:**

On or before the commencement of the terms of this Agreement, Provider shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, "Attention: Risk Manager." It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City as additional insured shall be submitted with the insurance certificates.

A. **COVERAGE:**

Provider shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence

\$1,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$1,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence
or
Combined Single Limit: \$1,000,000 each occurrence

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards and commissions, officers, and employees shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

Contractor shall furnish the following bonds from a bonding company acceptable to the City Attorney. Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to be sure to budget for the bond premiums.

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. **BONDS:**

Contractor shall furnish the following bonds from a bonding company acceptable to the City Attorney:

A. **Faithful Performance:**

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this contract, and

B. **Labor and Materials:**

A bond for labor and materials in the amount of 100% of the total contract price.

12. **PROHIBITION AGAINST TRANSFERS:**

Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Provider from City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to City by Provider.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. **PERMITS AND LICENSES:**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License, that may be required in connection with the performance of services hereunder.

14. **REPORTS:**

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

No report, information nor other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval by City.

Provider shall, at such time and in such form as City may require, furnish reports concerning the status of services required under this Agreement.

14. **RECORDS:**

Provider shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement.

Provider shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to such books and records to the representatives of City or its designees at all proper times, and gives City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Provider shall reimburse City for all reasonable costs and expenses associated with the supplemental examination or audit.

16. **NOTICES:**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda
Public Works Department
950 West Mall Square, Room 110
Alameda, CA 94501
Attention: Liam Garland, Administrative Services Manager
Ph: (510) 747-7930 / Fax: (510) 769-6030

All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

17. **URBAN RUNOFF MANAGEMENT:**

Contractor shall not discharge wash water from surface cleaning activities utilizing steam (thermal) and/or cleaning agents to the municipal storm sewer system, any street, curb or gutter, or directly to the shoreline or waters of the Alameda-Oakland Tidal Canal, Oakland Inner Harbor or San Francisco Bay. Wash water shall be contained and collected on-site and removed for proper disposal.

Contractor shall implement the surface cleaning Best Management Practices (BMPs) described in the BASMAA “Pollution From Surface Cleaning” guidance document. This document can be obtained from the BASMAA website at <http://www.basmaa.org/recognition/> or by contacting the City PWD Clean Water Program at (510) 747-7930.

Contractor shall obtain/maintain a current certification of completion from BASMAA’s “Pollution Prevention Training Program For Surface Cleaners.” Information on this certification program can be found on the BASMAA’S website homepage at <http://www.basmaa.org/>.

Contract shall not cause any water to intrude upon private property, including basements and/or subbasements.

18. **COMPLIANCE WITH MARSH CRUST ORDINANCE:**

Contractor shall perform all excavation work in compliance with the City’s Marsh Crust Ordinance as set forth at Section 13-56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

19. **COMPLIANCE WITH THE CITY’S INTEGRATED PEST MANAGEMENT POLICY:**

The Contractor shall follow the requirements of the City’s Integrated Pest Management (IPM) Policy to ensure the City is in compliance with its Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, issued by the San Francisco Bay Regional Water Quality Control Board.

The Contractor shall follow the requirements of the City’s Integrated Pest Management (IPM) Policy to ensure the City is in compliance with its Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, issued by the San Francisco Bay Regional Water Quality Control Board.

- Contractor shall use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.
- Contractor will consider the City IPM Policy’s hierarchy of options or alternatives listed below, in the following order before recommending the use of or applying any pesticide

on City property: (1)

1. No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds);
 2. Physical or mechanical controls (e.g. hand labor, mowing, exclusion);
 3. Cultural controls (e.g. mulching, disking, alternative vegetation) and good housekeeping (e.g. cleaning desk area);
 4. Biological controls (e.g., natural enemies or predators); (5)
 5. Reduced-risk chemical controls (e.g., soaps or oils);
 6. Other chemical controls.
- Prior to applying chemical controls the contractor shall complete a checklist for the City's pre-approval that explains why a chemical control is necessary. For annual contracts that require regular application of chemical controls the contractor shall submit one checklist prior to the initiation of the project demonstrating that the hierarchy has been reviewed and no other options exist. (Attached as Exhibit ____). Additionally, the contractor shall provide documentation to the City's project manager of the implementation of the IPM techniques hierarchy described in the City's IPM Policy.
 - Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
 1. Acute Toxicity Category I chemicals as identified by the Environmental Protection Agency (EPA)
 2. Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion)
 3. Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl), and fipronil
 4. Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered, and the threat of impact to water quality is prevented.
 - Contractor shall sign the Contractor Verification Form (attached as Exhibit __) indicating the intent to implement the City's IPM Policy, and return a signed copy to the City's project manager.
 - Contractor shall provide to the City's project manager an annual Report of all pesticide usage in support of City operations including pesticide name, active ingredient(s), target pest(s), the total amounts used and the reasons for any increase in use of any pesticide.
 - Contractor shall provide a copy of any current IPM certifications(s) to the City's project manager prior to initiation of the service work.

A copy of the City's IPM Policy may be obtained from the City's project manager and is also on file with the City Clerk. If this agreement pertains to the use of any items listed above, the Contractor will need to fill out and send in the Contractor Verification Form and Contractor Check List.

20. **PURCHASES OF MINED MATERIALS REQUIREMENT:**

Contractor shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral

materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report to City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: www.conservation.ca.gov/OMR/ab_3098_list/index.htm. Note that the list changes periodically and should be reviewed accordingly.

21. **LAWS TO BE OBSERVED.**

The Provider shall keep himself fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

22. **SAFETY:**

The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including safety of all persons and property during performance of the services under this AGREEMENT. This requirement will apply continuously and not be limited to normal working hours. Safety provisions will conform to U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the AGREEMENT. Where any of these are in conflict, the more stringent requirement will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a Police Report.

23. **TERMINATION:**

In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, City may terminate the Agreement forthwith by giving to the Provider written notice thereof.

City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

24. **PREVAILING WAGES:**

a. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. Since this Project involves a "public work" project, as defined by the Prevailing Wage Laws, Contractor shall fully comply with such Prevailing Wage Laws. Contractor's failure to comply with the Prevailing Wage Law may constitute a default under the contract for performance of the Work which would entitle the City to rescind the contract or exercise other remedies as provided by law or the contract.

b. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the City's Public Works Department, Building 1, 950 W. Mall Square, Room 110, Alameda. The Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. The Contractor shall defend, indemnify and hold the City, its elected 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 and/or the City's Labor Compliance Program (hereinafter referred to as "LCP"), if any.

c. If this project is funded in whole or in part with Federal monies and subject to the provisions of the Davis-Bacon Act, the successful bidder shall pay not less than the wage rates determined by the Secretary of Labor. The Federal wage rates shall apply unless the State wage rates are higher. The Federal Wage Rates applicable to the contract are those current within ten (10) days of the bid due date.

d. The Contractor and all subcontractors shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of *per diem* wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

e. The Contractor and all subcontractors shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

f. If during the period any bid for work on this Project remains open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of *per diem* wages in the locality in which this public work is to be performed, such change shall not alter the wage rates in the Notice calling for Bids or the contract subsequently awarded.

g. Pursuant to Labor Code § 1775, the Contractor shall as a penalty to the City, forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of *per diem* wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission. In addition, the difference between such prevailing rate of *per diem* wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of *per diem* wage shall be paid to each work by the Contractor.

h. Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of *per diem* wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work on the Project to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

i. For those crafts or job classifications requiring special prevailing wage determinations, please contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142-0603, (415) 703-4774 or check out the web site at www.dir.ca.gov.

25. **HOURS OF LABOR.**

a. As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that the employees' 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.

b. The Contractor shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

c. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

26. **CERTIFIED PAYROLL.**

a. Contractor's attention is directed to California Labor Code Section 1776, which requires Contractor and any subcontractors to keep an accurate payroll record and which imposes inspection requirements and penalties for non-compliance. Certified payrolls shall be prepared weekly, and at a minimum, submitted monthly to the Labor Compliance Officer, Gail Carlson, Public Works Department, 950 W. Mall Square, Room 110, Alameda, CA 94501 by the Contractor and each subcontractor. Contractor is responsible for the submission of copies of payrolls by all subcontractors. Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract, and shall certify the following:

b. That the payroll for each payroll period contains the name, social security number, and address of each employee, his or her correct classification, including applicable area and group code, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid, and that such information is correct and complete;

c. That such laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions; and

d. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. If the Contractor or a subcontractor does not work during the payroll period, a Statement of Non-Working Days must be submitted for each day not worked.

f. In the event of noncompliance with the requirements of such section after 10 Days written notice specifying in what respects compliance is required, the CONTRACTOR shall forfeit as a penalty to the CITY, \$25.00 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.

27. **APPRENTICES.**

a. Attention is directed to the provisions in sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him on contracts greater than \$30,000 or 20 working days. The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

b. Section 1777.5 requires the Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project, and which administers the apprenticeship program in that trade, for a certificate of approval, if they have not previously applied and are covered by the local apprenticeship standards.

c. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if: (1) the Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions; or (2) if the Contractor is not a signatory to an apprenticeship fund and if the funds administrator is unable to accept Contractor' required

contribution. The Contractor or subcontractor shall pay a like amount to the California Apprenticeship Council.

d. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

28. **LABOR DISCRIMINATION.**

No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, religion, age, national origin, sexual orientation, or physical disability of such persons and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of the provisions of the Labor Code, and, in particular, Section 1735.

29. **COMPLIANCES:**

Provider shall comply with all laws, state or federal and all ordinances, rules and regulations enacted or issued by City.

30. **CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

31. **INTEGRATED CONTRACT:**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

32. **CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

COMPANY
A California Corporation

CITY OF ALAMEDA
A Municipal Corporation

NAME
TITLE

John A. Russo
City Manager

RECOMMENDED FOR APPROVAL

NAME
TITLE

Robert G. Haun
Public Works Director

APPROVED AS TO FORM:
City Attorney

Michael Roush
Acting Assistant City Attorney

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES or PROVIDERS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Alameda
Public Works Department
Alameda Point, Building 1
950 West Mall Square, Room 110
Alameda, CA 94501-7558

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: The City of Alameda, its City Council, boards and commissions, officers & employees are additional insured for work done on their behalf by the named insured.

PRIMARY INSURANCE:
IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:
IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:
IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED (S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

NOTICE OF CANCELLATION:
IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

POLICY NUMBER:

COMMERCIAL AUTO
CG 20 48 02 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are “insureds” under the Who Is An Insured Provisions of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By: (Authorized Representative)
Named Insured:	

SCHEDULE

SAMPLE

Name of Person or Organization:

City of Alameda
 Public Works Department
 950 West Mall Square, Room 110
 Alameda, CA 94501-7558

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

REF: _____
The City of Alameda, its City Council, boards and commissions, officers, employees and volunteers are additional insured for work done on their behalf by the named insured.

NOTICE OF CANCELLATION:
 IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT OF CANCELLATION OF THE POLICY FOR ANY REASON OTHER THAN NON-PAYMENT OF PREMIUM, 30 DAYS WRITTEN NOTICE WILL BE SENT TO THE CERTIFICATE HOLDER BY MAIL. IN THE EVENT THE POLICY IS CANCELED FOR NON-PAYMENT OF PREMIUM, 10 DAYS WRITTEN NOTICE WILL BE SENT TO THE ABOVE.

Exhibit _____
City of Alameda Contractor Verification Form
Implementation of City of Alameda Integrated Pest Management Policy

The City of Alameda (City) is mandated to:

- (a) Minimize its reliance on pesticides that threaten water quality, and
- (b) Require the effective use of Integrated Pest Management (IPM) in all municipal operations and on all municipal property.

To ensure compliance with this mandate, all City operations need to verifiably implement the practices and policies described in the City's IPM Policy adopted June 15, 2010. A copy of this IPM Policy is included with this form. The implementation of the IPM Policy is applicable to all municipal contractors that provide landscaping, structural pest control, or other pest management services in support of City operations and/or on municipal property.

The undersigning parties acknowledge that all elements of the City's IPM Policy will be implemented throughout the period of contractual services provided to City operations and on municipal property. Specific actions to document this performance shall include:

- Pest Management Contractor shall provide to City project manager for pre-approval the Pest Management Considerations Checklist.
- Pest Management Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
 - o Acute Toxicity Category I chemicals as identified by the Environmental Protection Agency (EPA)
 - o Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion)
 - o Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl), and fipronil
 - o Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered and the threat of impact to water quality is prevented.
- Pest Management Contractor shall provide to the City's project manager an annual Report of all pesticide usage in support of City operations including product name and manufacturer, active ingredient(s), target pest(s), the total amounts used and reasons for any increase in use of any pesticide.
- If the Contractor's on-site personnel are currently IPM certified through either the EcoWise or GreenPro programs, or through another program, the contractor shall provide written evidence of any certifications to the City's project manager.

City Departmental Representative

Contractor Representative

Print Name

Print Name

Date

Date

City Department

City Contractor

Exhibit _____
**City of Alameda Pest Management Contractor Checklist:
Pest Management Options Considerations**

Contractor will consider the City IPM Policy's hierarchy of options or alternatives listed below, in the following order before recommending the use of or applying any pesticide on City property. Please provide a written explanation in each section below of why the specific pest management option is not appropriate:

(1) No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds)

Comment: _____

(2) Physical or mechanical controls (e.g. hand labor, mowing, exclusion)

Comment: _____

(3) Cultural controls (e.g. mulching, disking, alternative vegetation), good housekeeping (e.g. cleaning desk area)

Comment: _____

(4) Biological controls (e.g., natural enemies or predators)

Comment: _____

(5) Reduced-risk chemical controls (e.g., soaps or oils)

Comment: _____

(6) Other chemical controls

Comment: _____

Contractor Representative

Print Name

Date

City Contractor