



EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

AGENDA

Board of Directors Meeting
Bay Street Conference Room

5616 Bay Street

Emeryville, CA 94608

July 18th, 2019 @ 9:15 AM

Chair

Geoffrey Sears,
Wareham Development

Vice Chair

Betsy Cooley, At-Large
Residential Member

Secretary

Julie Cai,
Bay Street

Treasurer

Andrew Allen
At-Large Business
Member

Directors

Peter Schreiber,
Pixar

Colin Osborne
At-Large Business
Member

Kassandra Kappelos
Public Market

Bobby Lee, At-Large
Residential Member

1. Call to Order
2. Public Comment
3. Approval of the Minutes of the June 25th, 2019 Special Meeting of the Board of Directors (Attachment)
4. Executive Directors Report
 - A. Status Update on EGR Bus Yard at Mandela Parkway
 - B. Emery Go-Round Access to Peninsula and Marina
 - C. Status Update on Emery Go-Round Service to Emeryville Center for Community Life (ECCL)
5. Business Items
 - A. Review and Consider Approval of First Amendment to Professional Services Agreement with City of Emeryville for continued Paratransit Services (Attachment)
 - B. Review and Consider Approval of Amendment 1 to Professional Services Agreement with Yorke Engineering for continue Stormwater Assistance at the Emery Go-Round parking facility (Attachment)
6. Suggestions/Requests from Board Members
7. Confirm date of Next Meeting – August 15th, 2019 @ 9:15 AM
8. Adjournment

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Special Meeting of the Board

June 25th, 2019

1. Call to Order

The meeting was called to order at 9:03AM by Geoff Sears.

Directors Present: Geoff Sears, Betsy Cooley, Julie Cai, Peter Schreiber, Bobby Lee, Colin Osborne

Staff Present: Roni Hatstrup, Mary Grinbergs

Others: Diana Keena, City of Emeryville; David Adam, Watermark Resident

2. Public Comment

David Adams of Watermark by the Bay requested Board consideration for an additional stop on the Hollis route near Park Avenue and Hollis Street.

3. Approval of Minutes of the May 16th, 2019 Annual Membership and Board of Directors Meeting

Betsy motioned for approval. Peter Schreiber seconded the motion.

This item was approved by a unanimous vote.

AYE: 6

NAY: 0

ABSTAIN: 0

4. Executive Director's Report

A. Status Update on EGR Bus Yard at Mandela Parkway

Roni informed the Board that the design package was submitted to Caltrans on Friday. Roni further noted that the construction estimates came in at 2.9 million with a 20% contingency resulting in a higher cost for the project, than originally anticipated.

Roni also informed the Board that she was in the process of preparing comments and red-line edits to the boilerplate lease agreement, in collaboration with the subcommittee and ETMA legal counsel. Roni noted that the monthly lease rate and financial terms were still pending from Caltrans. Geoff Sears directed staff to submit the bid package to the Board for review.

5. Business Items

A. Review and Consider Approval of the Fixed Price Product & Services Maintenance Support Agreement with Syncromatics

Roni recommended approval of the fixed price product and services maintenance support agreement with Syncromatics for automated passenger counter (APC) equipment, installation and support. Roni provided answers to questions from the prior Board meeting, including who owns the Emery Go-Round data and whether privacy would be an issue with the equipment tracking facial recognition. Roni shared the responses from Syncromatics with the Board, noting that ETMA owns all data collected from any devices provided by Syncromatics and that the APC equipment does not record facial imagery and therefore privacy issues are not a concern with the proposed equipment. Lastly, Roni noted that the annual cost for the extended warranty on the equipment is \$3,500 per year, up to 5 years warranty extension.

Bobby motioned for approval of the agreement. Betsy seconded the motion.

This item was approved by a unanimous vote.

EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION

ACTION SUMMARY MINUTES

Special Meeting of the Board

June 25th, 2019

AYE: 6

NAY: 0

ABSTAIN: 0

B. Review and consider approval of the 2020 Preliminary Budget and Recommendation PBID Levy increase to Emeryville City Council

Roni provided an overview of the preliminary budget, including 2.2 million for the bus yard construction. Roni noted that \$500,000 was remaining in the current year budget to cover the initial cost of construction for the first two months. Roni noted that her budget assumptions included only \$2.7 million for the bus yard construction, which was reflective of only a 10% construction contingency, rather than the 20% included in the engineers estimate.

Due to the increase in the bus yard construction costs and the need to use more than \$1 million of the ETMA's cash reserves, than originally assumed, Roni recommended a 5% increase in the PBID for the 2020 calendar year. Roni also provided three forecast scenarios depicting the anticipated deficit, should the levy not be increased by 5%. Geoff Sears concurred with Roni's recommendation.

Peter Schreiber motioned for approval of the 2020 preliminary budget and the recommendation to City Council for a 5% increase in the PBID levy. Geoff Sears seconded the motion.

This item was approved by a unanimous vote.

AYE: 6

NAY: 0

ABSTAIN: 0

6. Suggestions/Requests from Board Members

Bobby inquired about whether alternative service options should be considered during periods of low ridership and suggested the use of pilot research budget to evaluate those options. Roni noted that it would be helpful to more precise passenger count data to conduct such an evaluation.

Colin requested a status update on the school stop request. Roni noted that the City was in the process of evaluating the PBID impacts and that the results of that analysis would need to be considered before making the recommendation to the Board to initiate the pilot service to ECCL.

Diana Keena agreed to follow-up with NBS on the status of their analysis.

7. Confirm Date of Next Meeting

The meeting date of July 18th was confirmed.

8. Adjournment

The meeting was adjourned at 10:54AM.



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

FIRST AMENDMENT

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT ("Amendment") is effective as of this _____ day of _____, 2019, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **EMERYVILLE TRANSPORTATION MANAGEMENET ASSOCIATION (ETMA)** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, the City and Contractor entered into a Professional Services Contract dated July 1, 2017 ("Contract") for the purpose of retaining the services of Contractor to provide Paratransit Services to residents of the 94608 zip code; and

WHEREAS, the City and Contractor desire to amend the Contract; and

WHEREAS, the public interest will be served by this Amendment.

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

1. AMENDMENT

The Parties agree to amend the Contract as checked below:

1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-***Revision Number*;

OR

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

1.2 Termination Date

- ☒ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **JUNE 30, 2021**.

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

1.3 Total Compensation Amount

- ☒ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **TWO HUNDRED FOUR THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$204,300)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FOUR HUNDRED SEVENTY THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$473,500)**.

2. CONTINUING EFFECT OF CONTRACT

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

3. ADEQUATE CONSIDERATION

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

4. SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5. WAIVER

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

SIGNATURES ON FOLLOWING PAGE

**6. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT
FIRST AMENDMENT**

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,
which shall become effective as of the date first written above.

Approved As To Form:

Asst. 

City Attorney

Dated: **CITY OF EMERYVILLE**

_____, 2019

Christine S. Daniel, City Manager

Dated: **EMERYVILLE TRANSPORTATION MANAGEMENT
ASSOCIATION (ETMA)**

_____, 2019

Veronica Hattrup, Executive Director *(Signature)*

Exhibit A-1
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION
8 To Go Paratransit Shuttle
Scope of Work Amendment

3. Compensation:

- a. The Parties desire to increase the Total Compensation Amount as set forth in Exhibit A, Section 3.a the Contract by **TWO HUNDRED FOUR THOUSAND THREE HUNDRED DOLLARS AND NO CENTS (\$204,300)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FOUR HUNDRED SEVENTY THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$473,500)** and shall be limited to the following items:

- ii. Operation of Paratransit Shuttle: The compensation for operation of Services performed shall be no more than **Ninety Nine Thousand, Eight Hundred Dollars (\$99,800)** for the period of July 1, 2019 through June 30, 2020 ("**Services Compensation FY 19-20**"); and **One Hundred Four Thousand Five Hundred Dollars (\$104,500)** for the period of July 1, 2020 through June 30, 2021 ("**Services Compensation FY 20-21**"). This compensation for operation of Services shall include salary and benefits of the driver of the vehicle utilized to provide the Paratransit Shuttle service, driver training expenditures related to office staff, insurance/claims, marketing, fuel, driver cell phone, supplies and equipment and maintenance of the vehicle utilized to provide the Paratransit Shuttle. Contractor shall provide a monthly report of office staff hours and its salary equivalent, as well as the cost of administrative expenses and any supplies and equipment utilized for the Paratransit Shuttle service. All other costs and expenses of the Paratransit Shuttle shall be eligible for reimbursement, subject to the annual limit described above. Contractor shall issue advance notice to the City if the operational costs are expected to exceed the limits defined above, so the Parties may negotiate a contract amendment.
- iii. On a monthly basis Contractor shall submit an invoice for Services provided to date. Upon verification, City staff will process an "**Interim Payment**" for Services during the invoice period. In no event shall the total for all Interim Payments exceed the Services

Compensation amount for FY 19-20 or FY 20-21. City may withhold any payments to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation of this Agreement. Approval and payment of any Interim Payment does not constitute acceptance of any future invoices.

**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
EMERYVILLE TRANSPORTATION MANAGEMENT ASSOCIATION AND YORKE ENGINEERING**

THIS AMENDMENT NO. 1 to agreement dated August 20th, 2018 between the Emeryville Transportation Management Association, a California non-profit corporation, herein called the "Association," and Yorke Engineering, a Limited Liability Corporation, herein called the "Consultant."

RECITALS

WHEREAS, Association retained Consultant to provide storm water assistance services for the Associations transportation parking facility; and

WHEREAS, Association wishes to extend the term of services one (1) additional year to June 30th, 2020 and increase the compensation limit by \$5,200.00 for continued services described in their proposal dated June 28th, 2019, which is attached as Exhibit A and incorporated herein.

NOW, THEREFORE, BE IT MUTUALLY AGREED that Section 2 of the agreement be amended to extend the term to June 30th, 2020 and Section 3 of the agreement be amended to increase the total compensation limit by \$5,200.00 for a total not to exceed amount of \$13,200.00.

IN WITNESS WHEREOF, the Association approved Amendment No. 1 to this Agreement on the _____ of _____, 2019.

EMERYVILLE TRANSPORTATION
MANAGEMENT ASSOCIATION

CONSULTANT

By: _____
Chair

By: _____

June 28, 2019

Ms. Veronica Hatstrup
Emeryville Transportation Management Association
Gray-Bowen-Scott
1211 Newell Avenue, Suite 200
Walnut Creek, CA 94596
Work: (925) 937-0980 x212
Cell: (925) 899-4246
E-mail: Roni@GrayBowenScott.com

Subject: Proposal – Environmental Compliance – 2019-2020 Storm Water Assistance

Dear Ms. Hatstrup:

Thank you for this opportunity to assist Emeryville Transportation Management Association (ETMA) by providing environmental compliance services.

QUALIFICATIONS

Yorke Engineering, LLC (Yorke) was founded in 1996 to provide professional air, water, and waste environmental services to clients in government and industry. We have offices across the State in Berkeley, San Jose, and the counties of Fresno, Kern, Orange, Los Angeles, Ventura, San Diego, and Riverside. Yorke specializes in air quality, water, waste, and safety permitting and compliance under the jurisdiction of the regulatory agencies. Since our founding, we have served over 950 clients, including schools and universities, transportation companies, chemical manufacturers, metal processing companies, recyclers, power generation facilities, utilities, cities, counties, hospitals, large industrial facilities, petroleum distribution and refining operations, and special districts, among others. We routinely work with and are well respected by various agency staff at the Regional Water Quality Control Boards (RWQCBs) and State Water Resources Control Board (SWRCB).

Yorke staff has provided storm water services to over 200 clients covered by California's Industrial General Permit (IGP) for storm water discharges from industrial facilities, including preparing Storm Water Pollution Prevention Plans (SWPPPs), evaluating facility sampling results versus Numeric Action Levels (NALs), performing Qualified Industrial Storm Water Practitioner (QISP) Level 1 Evaluations, and developing strategies and Best Management Practices (BMPs) designed to eliminate or reduce the impact of exceeding NALs. We also have nine QISPs on staff, four of whom are Trainers of Record (ToRs) and are certified to train QISPs.

For more information on Yorke, please visit our website at www.YorkeEngr.com.

BACKGROUND

We understand ETMA is seeking storm water compliance services for its bus storage location in Emeryville, CA. This facility is engaged in industrial activities with the potential to impact storm water and is therefore required to maintain compliance with California's General Permit for Discharges of Storm Water Associated with Industrial Activities (IGP).

ETMA is also requesting compliance assistance with IGP-required inspections and reporting for the 2019-2020 reporting year (July 1, 2019, through June 30, 2020). The IGP conditions for subjected businesses require reporting of storm water sampling within 30 days of receiving sampling results, an Annual Comprehensive Site Compliance Evaluation (ACSCE), and the associated annual submittal of a Storm Water Annual Report (Annual Report), by July 15th of each year. The reporting of the sampling data and the Annual Report are required to be submitted to the local RWQCB using the Storm Water Multiple Application and Report Tracking System (SMARTS) online submittal tool.

Yorke performed the IGP-required compliance services for the 2018-19 storm water year, and we are proposing to continue this effort for the 2019-20 storm water year.

SCOPE OF WORK

The scope of work includes the effort to provide storm water services to maintain compliance with the IGP. We will perform the following tasks as necessary:

Task 1 – Monthly Storm Water Visual Inspections

Yorke will visually observe each drainage area once per month for 12 months starting in July 2019 during daylight hours for the following:

- The presence or indications of prior, current, or potential unauthorized non-storm water discharges (NSWDs);
- Authorized NSWDs, sources, and associated BMPs; and
- Outdoor industrial equipment and storage areas, outdoor industrial activity areas, BMPs, and all other potential sources of industrial pollutants.

Deliverable: Completed Monthly Inspection Forms

Task 2 – Sample Collection

In the 2018-19 storm water year, Yorke collected storm water samples from four qualifying storm events (QSEs). Because all four samples were below the NALs, only two samples are required for the 2019-20 storm water year in accordance with IGP Section XI.C.7. Yorke will prepare and upload a certification that sampling will be reduced to two total samples (one from July 1 through December 31 and one from January 1 through June 30). A QSE is a precipitation event that produces a discharge for at least one drainage area and is preceded by at least 48 hours with no discharge from any drainage area. Yorke will take samples in accordance to the IGP Fact Sheet Section 1 D-10:

“...to collect samples during scheduled facility operating hours from each drainage location within four hours of: (1) the start of the discharge from a QSE occurring during scheduled facility operating hours, or (2) the start of scheduled facility operating hours if the QSE occurred in the previous twelve (12) hours.”

Yorke will obtain sample kits prior to coming to the site, and we will proceed to collect storm water samples, fill out the sampling event visual observation form, and fill out the chain of custody forms and sample bottle labels. Yorke will use broad-range litmus paper to determine the storm water sample pH at the time of collection, as required to meet the IGP requirements.

Deliverables: Sampling reduction certification uploaded in SMARTS, Completed Chain of Custody and Sampling Event Visual Observation Forms

Task 3 – Data Entry of Storm Water Sampling Results in SMARTS

Yorke will enter data for storm water sampling results from July 2019 through June 2020. Once the data is entered, as required by SMARTS, the Legally Responsible Person (LRP) or Duly Authorized Representative (DAR) from ETMA will need to review and formally submit each Ad Hoc Report. This task includes up to four sampling events.

Deliverable: Data Entry in SMARTS

Task 4 – Annual Comprehensive Site Compliance Evaluation and Annual Report

Yorke will assist ETMA with preparing its 2019-2020 Annual Report in accordance with the requirements of the relevant reporting screens in SMARTS. The will include an on-site visit to perform the following activities to complete the ACSCE:

- An inspection of all areas of industrial activity and associated potential pollutant sources for evidence of, or the potential for, pollutants entering the storm water conveyance system;
- An inspection of all drainage areas previously identified as having no exposure to industrial activities and materials in accordance with the definitions in Section XVII of the IGP;
- An inspection of equipment needed to implement the BMPs;
- An inspection of any BMPs;
- A review and effectiveness assessment of all BMPs for each area of industrial activity and associated potential pollutant sources to determine if the BMPs are properly designed, implemented, and effective in reducing and preventing pollutants in industrial storm water discharges and authorized NSWDS; and
- An assessment of any other factors needed to comply with the requirements in Section XVI.B of the IGP.

In addition, Yorke will require the following additional information from ETMA in order to complete the ACSCE:

- Sampling, visual observation, and inspection records conducted during the reporting year (July 1, 2019, through June 30, 2020).

Deliverables: On-Site Evaluation of Compliance Status; Draft 2019-2020 Storm Water Annual Report

COST ESTIMATE

We propose to perform this effort on a time and materials basis. Thus, only the effort required will be billed. If additional or unusual circumstances arise and additional effort is needed, authorization will be obtained prior to any additional effort.

Table 1: Estimated Project Hours

Task	Description	Hours
1	Monthly Storm Water Visual Inspections	15
2	Sample Collection	5
3	Data Entry of Storm Water Sampling Results in SMARTS	3
4	Annual Comprehensive Site Compliance Evaluation and Annual Report	7
Total (Hours)		30

Table 2: Cost Estimate and 2019 Labor Rates*

Labor Category	Hours	Labor Rate (\$/Hour)	Extended
Principal Engineer/Scientist II		\$210	\$0.00
Principal Engineer/CIH/Scientist I	7	\$198	\$1,386.00
Senior Engineer		\$187	\$0.00
Senior Scientist		\$176	\$0.00
Engineer	21	\$159	\$3,339.00
Scientist		\$147	\$0.00
Staff	1	\$108	\$108.00
Administrative/Project Support	1	\$78	\$78.00
ODCs**			\$285.00
Total			\$5,196.00

*Labor rates adjust by 3.5% rounded to the nearest dollar on January 1st of each year. Overtime, if required, will be billed at 1.3 times the listed rate.

**Other direct costs, such as shipping and copies, will be billed at cost, and mileage will be billed at the standard IRS rate, except subcontracted services, if required, will be marked up 10%.

Assumptions

In preparation of our estimate, we have made the following assumptions:

- Our effort will be limited to the budget defined, and if further effort is required, additional budget will be proposed for approval;
- ETMA will provide requested data in a timely manner;
- Yorke will be provided with a means to access the site for inspections and sampling so that the sampling can be performed without other personnel on-site;
- We will conduct up to 15 on-site visits, including 12 for monthly visual observations, one for the ACSCE, and two sampling events; additional meetings at the facility or at ETMA offices, if needed, will be conducted on a time and materials basis at additional cost;
- Services will be billed upon completion of each sampling event;
- A Monitoring Implementation Plan (MIP) will be provided to Yorke that is in compliance with the IGP;
- Sampling will not require any pumps or any other special apparatus;

- ETMA will apprise Yorke of any changes to storm water management that may affect visual monitoring;
- Storm water samples will be collected by Yorke personnel during the working hours of Monday through Friday, 8 a.m. to 5 p.m., if possible, but Yorke QISPs will be available in off-working hours 24 hours a day during the 5-day work week; if available, one of our QISPs will also collect on weekends;
- Sampling kits are expected to be provided by the labs;
- In the event Yorke personnel visits the site upon concurrence with ETMA to perform sampling and the discharge areas are not flowing (e.g., the rain stops), this will be considered a non-qualifying event and this effort will be billed at additional cost on a time and materials basis;
- Up to two sampling events are included for SMARTS data entry;
- ETMA is responsible for coordinating the laboratory pickup and analysis of sampling parameters;
- ETMA is responsible for the payment of laboratory services;
- Yorke can be identified to be copied on e-mail receipt of the laboratory analytical results; and
- Yorke will upload information into SMARTS and ETMA is responsible for certifying and submitting the information uploaded.

AUTHORIZATION TO PROCEED

If you concur with our proposal, you may simply fax [(949) 248-8499] or e-mail back this signed contract for us to begin, or if you prefer you may incorporate this proposal into your own purchase order or contract. The terms and conditions for performing this effort are contained in Attachment A.

Thank you again for this opportunity to assist in this project, and we look forward to working with you. If you have any questions, please call me at (949) 248-8490 x228.

Sincerely,



Brian A. Yorke
Dir. of Operations & Marketing
For Contract Approvals: Contracts@YorkeEngr.com
For Proposal/Technical Questions: BYorke@YorkeEngr.com



Signature of Agreement

7/8/19

Date

Veronica Hattup

Printed Name and Title

ATTACHMENT A

Yorke Engineering, LLC Terms and Conditions

Scope of Services

Yorke Engineering, LLC ("Yorke") agrees to perform the services particularly described in the agreement to which these terms are attached. The services are to be performed by Yorke as a consultant to Emeryville Transportation Management Association (CLIENT).

Compensation

CLIENT agrees to pay, and Yorke agrees to accept, compensation in accordance with the agreement to which these terms are attached. Payment will be made Net 30 days.

Responsibility of Yorke Engineering

Yorke is an independent contractor. CLIENT shall not direct the services or the means for accomplishment of the services to be performed. CLIENT, however, retains the right to require the services provided by Yorke to meet specific standards and requirements of the project without regard to the manner and means of accomplishment thereof.

Termination

CLIENT may terminate this contract for its convenience. Yorke shall be compensated for services provided to the date of termination. If Yorke persistently fails to provide the services in a manner satisfactory to CLIENT, then CLIENT may terminate this contract. Yorke shall be compensated for completed and useful services provided to the date of termination.

Choice of Law/Jurisdiction

This contract shall be subject to the laws of the State of California. Jurisdiction of litigation shall be in that state.

Severability

If any part of this contract is found to conflict with applicable laws, such part shall be null and void, but the remainder of this contract shall be in full force and effect.

Limitation of Liability

It is specifically agreed by and between Yorke and CLIENT, as a reasonable allocation of risks hereunder, that in no event shall Yorke's liability (including Yorke's employees, subcontractors, and consultants) to CLIENT exceed:

- A. As to liabilities relating to defects of design, remedial action, failure to render services, ordinary negligence, errors and omissions, permitting, and other similar actions arising under any individual project, not more than the dollar value of the applicable project; or
- B. As to all other remaining liabilities of every kind or nature, the sum of \$5,000.00 in aggregate for all such liabilities under this contract.

CLIENT agrees that any claim for damages filed against Yorke by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against Yorke or its

successors or assigns and that no individual person shall be made personally liable for damages, in whole or in part.

All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after substantial completion of the services.

Consequential Damages

Yorke shall not be liable to CLIENT for any incidental, indirect, special, or consequential damages (including but not limited to damages for loss of use, power, business good will, revenue, or profit, nor for increased expenses or business interruption) arising out of or related to the performance or non-performance of this contract and related project.

Non-Solicitation and Recruiting Fees

During the term of this agreement and for 2 years from the date the agreement is terminated, CLIENT will not directly or indirectly, on their own behalf or on behalf of or in conjunction with any person or legal entity, recruit, solicit, or induce, or attempt to recruit, solicit, or induce, any Yorke employee for employment who is involved in the performance of their duties for the CLIENT.

If a violation of the Non-Solicitation portion of this agreement is discovered, or the CLIENT chooses to hire the aforementioned Yorke employee, the CLIENT agrees to pay Yorke a fee equal to an amount of 75% of the Yorke employee's current salary within 10 business days as a recruiting fee.

Indemnity

Yorke agrees to indemnify CLIENT, its directors, employees, and officers, from and against only those direct claims, causes of action, liabilities, costs, or expenses, including reasonable attorneys' fees (excluding consequential and indirect damages) finally awarded and attributable directly to bodily injury, death, or property damage that CLIENT incurs as a result of actions and that arises directly out of and to the extent of Yorke's negligent acts or willful misconduct in and occurring during the performance of this contract. CLIENT shall provide Yorke reasonable assistance in defense or settlement of such claims. All of the indemnity and other provisions of this paragraph shall also reciprocally apply so that CLIENT is the indemnitor and Yorke is the indemnitee in a corresponding indemnity by CLIENT in favor of Yorke. In the event any liability to a third party results from the joint, concurrent, or combined negligence of Yorke and CLIENT, then Yorke and CLIENT will only indemnify, defend, and hold each other harmless to the extent of the indemnitor's allocable portion of such joint, concurrent, or combined negligence. Yorke shall not be responsible for any damages, costs, or other liability arising out of precontract or site environmental problems or for any liabilities that may arise from the non-negligent performance by Yorke of the work.

Integration

The terms and the agreement to which they are attached represent the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters. This contract may not be modified except in writing, signed by both parties.

Revision 2, 7/22/2015