

AGREEMENT FOR SERVICES
Bay Marine Boatworks, Inc.

THIS AGREEMENT is made and entered into as of the 22nd day of September, 2023 (the "Effective Date"), by and between the CITY OF REDWOOD CITY, a charter city and municipal corporation of the State of California ("City"), and Bay Marine Boatworks, Inc., a California corporation ("Contractor").

RECITALS

- A. City requires boat repair services.
- B. Contractor has the necessary experience in providing such services.
- C. Selection of Contractor is expected to achieve the desired results in an expedited fashion.
- D. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated herein by reference. City will have the right to modify the scope of work to delete tasks in whole or in part. Any individuals listed as "Key Personnel" on Exhibit "A" will perform the roles ascribed to them in Exhibit "A". Contractor may not change the list of Key Personnel without the prior written consent of the City.
2. Standard of Performance. While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the urban Northern California Area. Contractor will also use reasonable diligence and best judgment while exercising its professional skill and expertise.
3. Term. Unless terminated earlier pursuant to Section 21, the term of this Agreement will be for a period of two years from the Effective Date. The foregoing notwithstanding, continuation of the Agreement beyond the first year of the term is contingent upon the City Council appropriating necessary funds for this Agreement.
4. Schedule. Contractor will adhere to the schedule set forth in Exhibit "A", provided, that City, in its discretion, may grant reasonable extensions when performance of the Services is delayed due to unusually lengthy governmental reviews or other unexpected, unavoidable circumstances. Such circumstances will not include strikes, lockouts, work

stoppages, or other labor disturbances conducted by, or on behalf of, Contractor's officers or employees.

5. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

6. Compensation. City will pay to Contractor a not-to-exceed amount of Ninety-Five Thousand Dollars (\$95,000) for the completion of all the work and services described herein, which sum will include all costs or expenses incurred by Contractor, payable as set forth in Exhibit "A". City will have the authority to withhold a 10% retention until it has accepted all of the Services as complete.

6.1. Contractor must submit applications for payment that contain the following:

6.1.1. A clear, detailed invoice reflecting Services for which Contractor is billing City;

6.1.2. A summary sheet showing hourly rates (if applicable);

6.1.3. Number of hours worked;

6.1.4. Percentage of Services completed to date;

6.1.5. Amount/percent billed to date;

6.1.6. Current status of all tasks within a project;

6.1.7. Any backup documentation reasonably necessary to substantiate the preceding items; and

6.1.8. Any changes to the anticipated work schedule.

6.2. The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its officers, agents, employees, Contractors, or subcontractors (collectively, "Contractor Personnel"). City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or any Contractor Personnel. Contractor agrees to reimburse City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City makes on behalf of Contractor or any Contractor Personnel for work done under this Agreement. At the City's election, City may deduct the reimbursable amount from any balance owing to Contractor.

7. Status of Contractor. Contractor will perform the Services as an independent contractor and not as an employee of City. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

8. Labor Code Prevailing Wage. To the extent required by law, Contractor will comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages. When prevailing wage rules are applicable, the following provisions apply:

8.1. No less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the Services under this Agreement will be paid to all workers, laborers and mechanics employed in the execution of the Services by the Contractor or any subcontractor doing or contracting to do any part of the Services.

8.2. The appropriate determination of the Director of the California Department of Industrial Relations will be filed with and available for inspection at City offices.

8.3. Contractor will post, at each job site, a copy of the prevailing rate of per diem wages.

8.4. The Contractor will forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor.

9. Subcontracting. Contractor will not subcontract any portion of the Services without prior written approval of the City Manager or their designee. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the subcontractor's acts and omissions as Contractor is for the acts and omissions of persons directly employed by Contractor. Such responsibility will include responsibility for the acts and omissions of the subcontractor's officers, employees, Contractors, subcontractors, and agents. Nothing contained in this Agreement will create any contractual relationship between City and any subcontractor, and Contractor will be responsible for paying subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement that bind Contractor unless specifically noted to the contrary in the subcontract and approved in writing by the City Manager or their designee.

10. Other Contractors. City reserves the right to employ other Contractors in connection with the Services.

11. Indemnification.

11.1. Contractor will defend, indemnify and hold harmless (collectively "Indemnify") City and its officers, boards and commissions, agents, employees and

volunteers (collectively “Indemnitees”) from and against all claims, damages, losses and expenses including attorney fees (collectively “Losses”) arising out of the performance of the Services, caused or claimed to be caused by the acts, errors and/or omissions of Contractor, or any Contractor Personnel or anyone for whose acts any of them may be liable (collectively, “Responsible Parties”). Contractor’s responsibilities under this Section 11 include liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, which may be in combination with the acts or omissions of any Responsible Party, provided that Contractor’s duty to Indemnify will not include any Losses arising from the sole negligence or willful misconduct of City.

11.2. Notwithstanding Contractor’s obligation to defend City hereunder, City has the right to conduct its own defense and seek reimbursement for reasonable costs of defense from Contractor, if City chooses to do so.

11.3. Contractor agrees to pay any and all costs City incurs enforcing the provisions set forth in this Section 11.

11.4. Subsection 11.1 notwithstanding, in accordance with California Civil Code Section 1668, as amended, nothing in this Agreement will be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law.

11.5. Nothing contained in this Agreement will be construed to require Contractor to Indemnify Indemnitees against any responsibility or liability in contravention of California Civil Code Section 2782.8, as amended. To the extent this Agreement is a “construction contract” as defined by California Civil Code section 2783, as amended, such duties of Contractor to indemnify will not apply when to do so would be prohibited by California Civil Code Section 2782 as amended.

11.6. The Parties expressly agree that any reasonable payment, attorney's fee, cost or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation plan is included as a loss, expense or cost for the purposes of this Section 11.

11.7. Acceptance by City of Contractor’s services and duties will not operate as a waiver of City’s rights under this Section 11.

11.8. The parties expressly agree that this Section 11 will survive the expiration or early termination of the Agreement.

12. Insurance. Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by

Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-VII".

12.1. Coverages and Limits. Contractor, at its sole expense, will maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement.

12.1.1. Commercial General Liability Insurance. Contractor will maintain occurrence based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Services, project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy will be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

12.1.2. Business Automobile Liability Insurance. Contractor will maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles. For on-call services agreements, the Business Automobile Liability insurance policy will be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

12.1.3. Workers' Compensation Insurance. Contractor will maintain coverage as required by the California Labor Code. The Workers' Compensation policy will contain an endorsement stating that the insurer waives any right to subrogation against the City, its officers, agents, employees and volunteers.

12.1.4. Employer's Liability Insurance. Contractor will maintain coverage with limits not less than \$1,000,000 per each accident for bodily injury or disease.

12.2. Notice of Cancellation. This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without Contractor providing thirty (30) days prior written notice to City sent pursuant to the Notice provisions of this Agreement.

12.3. Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will provide to City certificates of insurance and above-referenced endorsements sufficient to satisfaction of City's Risk Manager. In no event will Contractor commence any work or provide any Services

under this Agreement until certificates of insurance and endorsements have been accepted by City's Risk Manager.

12.4. Failure to Maintain Coverage. If Contractor fails to comply with these insurance requirements, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

12.5. Submission of Insurance Policies. City reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

13. Business License. Contractor will obtain and maintain a City of Redwood City Business License for the term of the Agreement, including any extension terms.

14. Ownership of Documents. If Exhibit "A" or any task order or purchase order under this Agreement lists a document, report, or other material as an item to be provided by Contractor to City (a "Deliverable"), such Deliverable will be and remain the property of City. Contractor will provide a copy of all Deliverables to City in their native format. Contractor may retain one copy of any Deliverable for its internal records, but it may not use a Deliverable for any other purpose without the prior written consent of City. Any reports and other material prepared by or on behalf of Contractor under this Agreement that are not Deliverables (collectively, the "Contractor Documents") will be and remain the property of Contractor. City may request copies of Contractor Documents, and to the extent Contractor agrees to provide copies of such Contractor Documents, they may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem appropriate without further employment of or payment of any compensation to Contractor.

15. Maintenance of Records. Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Such records will not be Deliverables prepared for City and will be Contractor Documents for purposes of this Agreement. Nothing herein will convert such records into public records, and they will be available only to City and any specified public agencies. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow City to inspect of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

16. Copyrights. Contractor agrees that all copyrights that arise from the Services will be vested in City, and Contractor relinquishes all claims to the copyrights in favor of City.

17. Notices. The name of the persons who are authorized to give written notices or to receive written notice on behalf of City and on behalf of Contractor under this Agreement.

For City:

City of Redwood City
Attention: Public Works
Fleet Supervisor
1400 Broadway Street
Redwood City, CA 94063
(650) 780-7464

For Contractor:

Allison Mezzera
Contracts Supervisor
310 W. Cutting Boulevard
Richmond, CA 94804
(510) 237-0140

Except as otherwise stated, all notices provided under this Agreement must be in writing and delivered by regular and certified mail. Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

18. Conflict of Interest. If disclosure under the Political Reform Act and City's Conflict of Interest Code is required of Contractor or any Contractor Personnel, Contractor or Contractor Personnel will complete and file with the City Clerk the Statement of Economic Interests Form 700.

Contractor, for Contractor and on behalf of all Contractor Personnel, warrants by execution of this Agreement that they have no interest, present or contemplated, in the projects affected by this Agreement. Contractor further warrants that neither Contractor, nor any Contractor Personnel have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Contractor will file with City an affidavit disclosing this interest.

19. General Compliance with Laws. Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

20. Discrimination and Harassment Prohibited. Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

21. Termination.

21.1. Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement.

21.2. If Contractor fails or refuses to perform any of the provisions of this Agreement, and if Contractor does not cure the default within five (5) days of the City providing a written notice specifying the nature of the default, City may terminate this Agreement immediately by giving written notice to Contractor.

21.3. If City materially fails or refuses to perform any of the provisions of this Agreement, and if City does not cure the default within thirty (30) days of Contractor providing a written notice specifying the nature of the default, Contractor may terminate this Agreement immediately by giving written notice to City.

21.4. Within ten (10) days of termination pursuant to this Section 21 or of the natural expiration of this Agreement, Contractor will assemble any Deliverables without charge and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed up to the termination date; however, the total will not exceed the amount payable under this Agreement. City will determine the final payment amount based upon the value of the work product delivered to City and the percentage of the Services performed.

22. Covenants against Contingent Fees. Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

23. Claims and Lawsuits. Contractor acknowledges that if a false claim is submitted to City by Contractor, Contractor may be subject to criminal prosecution for fraud. Contractor also acknowledges that California Government Code sections 12650 *et seq.* (the False Claims Act), as amended, applies to this Agreement and provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding. As a result of such proceeding, Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges that disbarment by another jurisdiction is grounds for City to terminate this Agreement.

24. Jurisdiction and Venue. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Mateo, State of California. The Parties waive all provisions of law providing for a change of venue in these

proceedings to any other county.

25. Successors and Assigns. This Agreement will be binding upon the Parties and their respective successors and assigns. Contractor may not assign this Agreement, nor any part of it, nor any monies due or to become due under it without the prior written consent of City, which City may withhold in its sole discretion.

26. Paragraph Headings. Headings in this Agreement are for convenience only and are not part of any provision in this Agreement. No heading will be construed to change the meaning of any provision.

27. Entire Agreement; Conflicts. This Agreement, together with any other written document referred to or contemplated by it, along with any purchase order or task order for this Agreement, embodies the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede any purchase order or task order and any other attachment or exhibit.

28. Amendments. This Agreement may only be amended, modified, waived or discharged in a writing signed by both Parties.

29. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

30. Electronic Signatures. If all Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Parties will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After all Parties agree to the use of electronic signatures, all Parties must sign the document electronically.

(Signature Page Follows)

CITY:

City of Redwood City,
1017 Middlefield Road
Redwood City, CA 94063

By: Melissa Stevenson Diaz
Melissa Stevenson Diaz, City Manager

ATTEST:

J Castro

Yessika Castro, Interim City Clerk

CONTRACTOR:

Bay Marine Boatworks, Inc.
310 W. Cutting Boulevard
Richmond, CA 94804

*By: alan cameron
alan cameron (Sep 21, 2023 08:04 PDT)

**By: Leslie Cameron
Leslie Cameron (Sep 21, 2023 09:39 PDT)

Printed Name: alan cameron

Printed Name: Leslie Cameron

Title: VP

Title: Secretary

If required by City, proper notarial acknowledgment of execution by Contractor must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT "A"

SCOPE OF SERVICES AND FEE

Scope of Services:

Contractor shall provide boat repair services on an hourly basis at the request of the Superintendent of Equipment Services or their designee.

Contractor shall respond to regular on-site service calls Monday through Friday between the hours of 7:30am to 4pm PST. Contractor shall have the ability to respond to emergency on-site service calls after hours and on weekends, if necessary.

Fees:

City shall pay Contractor on a time and materials basis per the fee schedule outlined below and in an amount not to exceed Ninety-Five Thousand Dollars (\$95,000). Invoices shall be billed monthly with Net 30 payments terms, in a form consistent with Section 6, Compensation.

Regular Service Call (Mon-Fri 7:30am – 4pm PST)	\$145/hour
Emergency On-Site Service Call (After hours or Weekends)	\$155/hour