



Finance Department  
General Services Division

**REQUEST FOR PROPOSALS (RFP)**  
**Specification No. 17-11131-C**  
**FOR**  
**BERKELEY TUOLUMNE CAMP DESIGN**  
**PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals for design services. As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached).

**Proposals must be received no later than 2:00 pm, on Tuesday, August 8, 2017.** All responses must be in a sealed envelope and have “**BERKELEY TUOLUMNE CAMP DESIGN**” and **Specification No. 17-11131-C** clearly marked on the **outer most mailing envelope**. Please submit one (1) unbound original and three (3) unbound copies of the proposal as follows:

**Mail or Hand Deliver To:**

City of Berkeley  
Finance Department/General Services Division  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

**For questions** concerning the anticipated work, or scope of the project, please **contact Liza McNulty, Project Manager**, via email at [LMcNulty@ci.berkeley.ca.us](mailto:LMcNulty@ci.berkeley.ca.us) no later than **Friday, July 28<sup>th</sup> at 5:00 pm**. Answers to questions will **not** be provided by telephone or email. Rather, answers to all questions or any addenda will be **posted** on the City of Berkeley’s site at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>. It is the vendor’s responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

A non-mandatory pre-proposal site visit is scheduled for Friday, July 21<sup>st</sup> at 10 am. RSVP in advance is strongly recommended, please RSVP to Liza McNulty, Project Manager, at [LMcNulty@ci.berkeley.ca.us](mailto:LMcNulty@ci.berkeley.ca.us).

We look forward to receiving and reviewing your proposal.

Sincerely,  
Shari Hamilton  
General Services Manager

## **I. BACKGROUND**

Berkeley Tuolumne Camp (BTC), established in 1922, is a 15-acre property located on Hardin Flat Road off of Highway 120 in Stanislaus National Forest. BTC is operated by the City of Berkeley (City) under a Special Use Permit with the United States Forest Service (USFS). BTC has served primarily as a family camp in the past, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. In August of 2013, the California Rim Fire destroyed Berkeley Tuolumne Camp (BTC). In December 2013 the Rim Fire was declared a federal disaster.

Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time, and served over 4,000 campers each year. The major facilities at BTC included: a Dining Hall; a Recreation Hall; 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; pedestrian bridges; parking and loading areas, and electric, phone, internet, water supply and treatment, and wastewater utilities. The majority of structures at BTC were destroyed by the fire. The South Fork of the Tuolumne River runs through BTC, with a pedestrian bridge and utilities crossing over the River. Two local creeks run through BTC to discharge to the South Fork Tuolumne River.

After the Rim Fire, hazardous tree removal in the immediate Camp area was completed by the United States Forest Service (USFS). Although vegetation has begun to recover on the site, it is largely devoid of trees within the burned area. Debris removal was completed in the fall of 2013 immediately after the Rim Fire, however building foundations, walls, stairs, pipes, concrete slabs, underground utilities and various other pre-fire remnants remain on site. Many hazardous trees remain within the site limits, or within striking distance of the reconstruction site.

The City desires to hire a design consultant to conduct code and cost analyses, develop basis of design documentation, and complete the design and bid package for the reconstruction of BTC (Project).

The ideal proposer will demonstrate relevant experience and expertise in:

- Design of site-wide camp or ‘campus’ type projects, including site, building, bridge and utility/water/wastewater design;
- California and local Building Codes and Ordinances, and applying local and state regulatory requirements to a project of similar scale;
- Design of rustic structures that reflect and enhance their natural environment, ideally in a United States Forest Service setting;
- Projects involving an insurance claim;
- Projects funded by a FEMA Public Assistance Grant;
- Cost estimating;
- Alternative analysis for cost-effective design and value engineering;
- Working with a large and diverse stakeholder group; and
- California environmental permitting and regulatory setting.

The Project includes multiple stakeholders in addition to the City of Berkeley. These include:

- United States Forest Service
- Tuolumne County
- Insurance
- Federal Emergency Management Agency (FEMA)
- California Office of Emergency Services (CalOES)
- Tuolumne Me-Wuk Tribal Council
- Multiple public non-profit entities, including but not limited to the Friends of Berkeley Tuolumne Camp and the Tuolumne River Preservation Trust.

Project Elements

The major elements of the Project to be designed for reconstruction are listed below.

**Table 1: Project Elements**

Pedestrian Bridge over South Fork Tuolumne River	Misc. Structures  <i>Stage/Amphitheater Kiddie Camp Sauna Camp Managers Cabin Nurse Cabin Office/Store Nature Center Mechanic Cabin Maintenance Shop Recycling Shed</i>
Utilities  <i>Water Supply and Treatment Wastewater Collection and Treatment Electrical, Telephone, Internet</i>	
Site Grading and Paths, Stairs, Roads, Drainage, Walls	
Dining Hall	Misc. Site Features  <i>Beach Sports Courts Information Kiosk Playground Shade Structures</i>
Restrooms / Laundry	
Recreation Hall	
Camper Tent Cabins	
Staff Cabins	
Re-Vegetation	

Work Completed to Date

This City has worked with the USFS and a Planning Consultant (PC) to develop a conceptual plan for the reconstruction of BTC. The PC is also responsible for Master Plan development, NEPA/CEQA and permitting support, and environmental documentation for the Project. A significant number of baseline and preliminary design and engineering documents have been completed in Draft form. This list is representative, but not comprehensive of all reports and analyses produced during the Planning Phase to date. These reports are available on request after completion of a non-disclosure agreement. To request a copy of these Draft documents send an email to the Project Manager, Liza McNulty at [Lmcnulty@cityofberkeley.info](mailto:Lmcnulty@cityofberkeley.info).

**Table 2: Draft Project Reports Completed by Others**

Water / Wastewater Engineers Report	Public Scoping Package
Master Development Plan - Site Plan Figures	Preliminary building floor plans
Design Guidelines	Preliminary building elevations
Watershed Management Report w/ Hydrologic/Hydraulic Technical Appendix	Preliminary building sections
Biological Evaluation – Forest Service Sensitive Plants	Structural narrative
Aquatic Biological Evaluation / Biological Assessment	Mechanical / plumbing narrative
Terrestrial Biological Evaluation / Biological Assessment	Electrical narrative
Wetland Delineation	Commercial kitchen narrative
Botany Report	As-Was Structures Detailed Summary
Noxious Weed Risk Assessment	Management Indicator Species
Statement Regarding Migratory Birds	Narratives of Conceptual Building Design
Economic Analysis	

The PC will remain on the Project team through the design process, continuing to assist the City on the tasks described above and supporting the transition from conceptual to detailed design.

A one-foot survey of the Berkeley Tuolumne Camp was completed in 2009. After the fire, when it was realized that some facilities would need to be relocated, additional one-foot survey of these new areas was completed in

2015. The topography includes rock outcroppings, trees greater than 4” diameter at breast height, edge of paved areas (including roadways), exposed drain pipes and culverts, and demarcation of existing established pathways.

#### Approach to Design Services Scope of Work

The City has established funding mechanisms for the Project including insurance, FEMA Public Assistance Grant, and City funds. A successful reconstruction Project requires careful planning and coordination with the City’s funding partners to ensure that the ultimate design of the Project is eligible for funding as expected and budgeted for by the City.

Both FEMA and Insurance consider the pre-fire condition as well as regulatory requirements (code, ordinances, etc.) that were in place at the time of the fire to determine eligibility of Project costs. FEMA also considers hazard mitigation and value-engineered Project alternatives when determining eligibility, and the City has determined a budget for ineligible costs based on the conceptual planning work to date. All of these factors must be incorporated into design decisions and will inform the final design of the reconstruction Project.

The intent is to first establish a ‘baseline’ Project as a strict interpretation of the requirements to reconstruct BTC inclusive of, but limited to, improvements mandated by code, ordinance and law. From that baseline, hazard mitigation, value engineering and improvements will be considered and incorporated into the final design.

The goals of the BTC Design Scope of Work are to:

- Document the ‘as was to code’ project requirements and construction costs to the satisfaction of the City and its funding partners;
- Gather all required site data for the development of detailed design drawings;
- Conduct alternatives analyses based on the ‘as-was to code’ and conceptual design work completed to date to develop a basis of design documenting the rationale for the ultimate design of each Project element. This rationale may be based on pre-fire conditions, regulatory requirements, value engineering, mitigation of environmental impacts, programmatic improvements or hazard mitigation. The basis of design documentation must provide the City and Project stakeholders with sufficient detail to determine eligibility of various Project elements for insurance or Public Assistance Grant Funding.
- Develop construction plans, specifications and cost estimates for the reconstruction of Berkeley Tuolumne Camp, providing sufficient detail in invoicing to separately track and document design related fees for ineligible Project elements if applicable; and
- Meet a milestone schedule to allow for construction to begin in Spring, 2019.

#### Cost Tracking and Invoicing

Due to the multiple funding partners involved in this Project, the City is required to keep detailed cost records. Invoices will be required to provide a high level of detail, including progress reporting, percent complete by task or subtask, hours worked by staff classification by task or subtask for the Prime consultant and any sub consultants. In addition to task-level cost tracking, it is anticipated that specific project elements will require separate cost tracking and invoices. For example, invoices (including work completed by sub consultants) will need to separately track design costs associated with unique Project elements (Dining Hall, Recreation Hall, Utilities, etc.). The level of detail will depend on the detailed design approach as determined during the course of the work, and the City will provide direction and invoice templates as necessary to support this detailed billing.

## **II. SCOPE OF SERVICES**

The tasks listed below are intended to meet the Project goals. This list is not definitive and is intended as a guide to illustrate the minimum Project requirements. All prospective consultants are encouraged to present additional or alternative tasks that may serve to most efficiently achieve the Project goals.

### **1.0 Code Analysis and Cost Estimates**

The Conceptual Plan developed to date includes improvements to the pre-fire condition to meet current code requirements, however it also reflects the result of conceptual-level value engineering and programmatic design

decisions. Insurance and FEMA eligibility determination requires the development of a cost estimate to reconstruct the Project to its pre-fire condition with incorporation of only required code, ordinance, and laws (an ‘as was to code’ cost estimate).

The proposed scope of work should assume that all deliverables within this task will be subject to an initial draft review by City staff, and both a revised draft and final draft review by the City, its insurer and FEMA. All comments will be transmitted in a comment tracking log; written responses to comments in addition to appropriate revisions will be required.

### 1.1 Code Analysis - Project Requirements

Identify all BTC project requirements (“Project Requirements”) for reconstruction due to local, state, or federal codes, ordinances or laws regulating the construction of sites, buildings or structures relevant to the Project which were in force in August, 2013, or came into force by February, 2014 (“Regulatory Requirements”). This includes identifying relevant Forest Service requirements for the Project, and construction and post-construction best management practices (BMPs) or mitigation measures which the Project will be required to meet. Insurance and FEMA may use different eligibility criteria for Project Requirements based on whether the requirement is based on Forest Service, federal, state or local conditions. Therefore the documentation must provide a specific reference to the source(s) and justification(s) for each Project Requirement.

This task includes identifying the specific scope of Project Requirements resulting from each specific Regulatory Requirement. The expectation is that the Project Requirements documentation will provide specific BTC design requirements based on this analysis. For example, the Project Requirements associated with the Tuolumne County Flood Damage Prevention Ordinance would include the minimum finished floor elevation for structures within the floodplain, identification of which utilities or spaces would require flood-proofing in the as-was plus code scenario, identification of which utilities must be relocated outside of the floodplain limits to meet the ordinance requirements, etc.

A memorandum documenting the Project Requirements will be prepared for review by the City, its insurer, and FEMA staff.

### 1.2 As-Was to Code Cost Estimate

After finalization of the “As-Was to Code” Project Requirements, develop detailed cost estimate to re-construct the Berkeley Tuolumne Camp to the pre-fire condition with implementation of the As-Was to Code Project Requirements. The estimate shall include estimated ‘soft’ costs such as project management, design, securing environmental permitting, permit fees, construction management, etc.

Project Requirements may require design decisions in order to accurately develop a cost estimate. For example, Tuolumne County Ordinances require that the reconstruction provide more off-street parking than existed in the pre-fire condition. Where to locate this off street parking must be determined in order to develop an accurate cost estimate. The conceptual design reflects the City’s efforts to date to resolve these design decisions; the design team will work with the City to review the basis for the conceptual design, and independently determine if an alternative more cost effective solution should be presented for the purposes of the ‘as-was to code’ cost estimate.

## **2.0 Data Collection & Base Mapping**

### 2.1 Planning to Design Transition

The Planning Consultant will provide the Design team with a ‘Planning to Design Transition Report’ including a digital appendix of all relevant Project files. In addition, a workshop will be conducted to inform the Design Team of the basis of the conceptual design developed to date, the environmental conditions on the site, relevant USFS criteria and communications, etc.

### 2.2 Hazardous Tree Survey

A post-fire tree survey and report for 14.5 acres of BTC was conducted in November, 2013. As detailed in the public scoping documents compliance with state and local laws and regulations will require re-location of some cabins. Off-street parking will also be required to comply with County ordinances. The total permit area has been expanded from the pre-fire ~15 acres to approximately 30 acres to account for these relocated facilities. The additional 15 acres has not been surveyed for fire damaged trees. Some tree removal (by the USFS) has occurred within the original 15-acre permit area.

An updated tree assessment report that reflects the increased permit area, tree removals completed to date, and tree removals required for Project completion is needed.

### 2.3 Geotechnical Work Plan, Investigations and Report

No geotechnical data has been collected by the City or its consultants during the Planning Phase.

The Design Consultant shall develop and execute a Geotechnical Work Plan to collect geotechnical information needed to complete detailed design. The Geotechnical Work Plan should include a detailed description of the work to be conducted, including equipment to be used, location and depth of any surface or sub-surface investigations, access paths and staging areas and best management practices that will be employed. The City will obtain all permits and environmental clearances required for the work. A geotechnical/soils report summarizing findings should be included with the Basis of Design documentation.

### 2.4 Base Map

Collect existing survey, topographical, GIS, property, easements and rights of way and utility/infrastructure data as applicable to generate the Project Base Map for purposes of final design. The existing available topographic data is available on request. As indicated in Task 2.1, a digital appendix of existing survey and utility data (as shown in the as-was documentation) will be provided.

Conduct field survey work as necessary to verify and supplement existing topographical data for the entire area of work including project staging areas. Survey work shall be adequate for preparation of base mapping data that will be used for final design. Pothole existing utilities, pipelines, and other infrastructure as necessary to verify location for design and inclusion in the final drawings.

The Base Map should include site features that are onsite which will require demolition or removal to complete Project construction, including hazardous trees, remnant structure foundations, debris, or utility lines or vaults. The extent of the fire damage to underground water distribution, propane, and wastewater collection system has not been determined. This task includes determining and mapping the extent of damage and need for replacement of these underground utilities.

## 3.0 **Basis of Design**

The proposed scope of work should assume that all deliverables within this task will be subject to an initial draft review by City staff, and both a revised draft and final draft review by the City, its insurer and FEMA. All comments will be transmitted in a comment tracking log; written responses to comments in addition to appropriate revisions will be required.

### 3.1 Basis of Design

In order to determine eligibility for coverage, any changes to the Project from the 'as-was plus code' established in Task 1 must be clearly documented and justified.

The basis of design task will evaluate and document any proposed changes to the 'as-was plus code' Project Requirements. Reasons for changes to the as-was condition may include hazard mitigation, value engineering or cost savings, or City programmatic improvements.

This task includes all alternatives and engineering analyses and calculations that are required to support and develop the basis of design for the Project. It is the responsibility of the design consultant to perform independent analyses, as appropriate, to fully develop the Basis of Design without relying solely on work completed by others.

The Basis of Design document should define all technical requirements and parameters of the Project. Where the design will differ from the ‘as was plus code’ Project Requirements identified in Task 1, the justification for the variance, including cost estimates if required, shall be provided. Project elements that are currently anticipated to vary from the “Project Requirements” developed in Task 1 include, but are not limited to:

- Dining Hall. The pre-fire Dining Hall included office, arts, and laundry facilities on the lower level, within the 100-year floodplain. To meet County ordinances, it is anticipated that one Project Requirement will be flood proofing of these facilities. It is expected that value engineering will result in instead re-locating these lower level facilities to other structures. Similarly re-configuration of the pre-fire floorplan and storage is anticipated.
- Recreation Hall. The pre-fire Recreation Hall was not compliant with disabled access requirements. It is expected that relocating the Recreation Hall downslope may be a more cost effective approach than providing accessible access in the original location.
- Pedestrian Bridge. The pedestrian bridge over the South Fork Tuolumne River must be elevated above the 100-year flood elevation as a Project Requirement, however design alternatives to determine how to minimize environmental impacts (i.e. fill in the river channel) to the maximum extent feasible may be required for environmental permitting.

### 3.2 Revised Conceptual Design Plan

Once the City and its partners have accepted the basis of design, the existing conceptual design and cost estimates will be revised if necessary to reflect the final basis of design. In general, costs associated with City programmatic improvements will be ineligible for coverage by FEMA or insurance. The cost estimate should allow for identification of eligible vs. ineligible costs.

The revised conceptual design plan will be submitted as Draft for review and comment to the City, insurance, FEMA, Tuolumne County and USFS prior to finalization.

## 4.0 **Environmental / Permitting Support**

Permit applications will be prepared by others, however the Design consultant team will be required to support the development of Permit applications. This task includes, but is not limited to:

- Development of figures and description of cut/fill volumes, construction access, dewatering, staging and equipment for use in permit applications related to the construction of culverts, bridge abutments and piers, walls, and foundations within the South Fork Tuolumne River 100-year floodplain and local Creeks;
- Plans, specifications and reporting to support surface water use and treatment related permits;
- Plans and specifications showing work within the County’s Hardin Flat Road 50-foot right-of-way and PG&E easements;
- Demolition and grading plans and specifications;
- Plans, specifications and reporting to support state and local water treatment permits.
- Percolation tests and soil profiles, system design plans and specifications and site evaluation testing pursuant to Tuolumne County requirements for on-site sewage treatment and disposal system certifications;
- Details regarding Dining Hall kitchen plans and specifications to facilitate review by Tuolumne County under California Retail Food Code; and
- Structural Calculations Report, Title 24 Energy Documentation.

## 5.0 **Stakeholder Coordination / Public Assistance Grant Requirements**

### 5.1 Meetings

It should be assumed that regular meetings with the City and other stakeholders, including but not limited to FEMA, Insurance and USFS will be required. At a minimum, the scope of work will include the following meetings in addition to those explicitly included elsewhere in this scope of work:

- One meeting with Insurance and FEMA to present the as-was to code Project Requirements and cost.
- One meeting with FEMA and Insurance to present the 30% Design.

- Three meetings with USFS in Sonora to discuss Project Requirements, Revisions to the Conceptual Design Plan and present the 30% Design.
- One meeting with other Project stakeholders to present the 30% Design.
- Attendance at two Public Meetings, one each for CEQA and NEPA.
- Regular monthly meetings with the City throughout the Design Phase; assume half can be accomplished via conference call.

## 5.2 Invoicing & Reporting

Tasks 1 and 3 will provide sufficient detail for the City, insurance and FEMA to determine the eligibility of specific Project elements for coverage. Once that determination is made, all invoicing must separate design tasks based on eligibility, such that the City and its partners can separately track and document time and costs associated with ineligible Project elements. The Design Project Manager will work with the City Project Manager to modify the invoice template to provide this level of separate cost tracking as needed. The Designer will respond to further backup or documentation requests as needed.

## 6.0 **Detailed Design Plans, Specifications and Cost Estimates**

The proposed scope of work should assume that all deliverables within this task will be subject to review by City staff, its insurer, FEMA, Tuolumne County, the Planning Consultant and the USFS, in addition to any agencies who have jurisdictional permitting authority.

The City will coordinate review by the various stakeholders and deliver consolidated comments to the design team. All comments will be transmitted in a comment tracking log; written responses to comments in addition to appropriate revisions will be required.

### 6.1 30% Plans, Specifications and Cost Estimates

The design consultant shall prepare and submit 30% drawings, specifications, and cost estimates. The 30% design set should establish the primary drawings and specifications for all major Project elements, should include development of details at a preliminary level, and shall meet the City standards for Plans and Drawings. The plans and specifications shall include sufficient detail to demonstrate the Project has addressed all of the Regulatory Requirements previously identified in Task 1.1.

Similar to tasks 4.1 and 3.2, the cost estimate (and eventually the bid schedule) will be structured to allow for separate cost tracking and accounting of ineligible Project elements.

### 6.2 60% Plans, Specifications and Cost Estimates

The design consultant shall prepare and submit 60% drawings, specifications, and cost estimates. Plan and section drawings should be included to a high degree of completion, and most details should be present and substantially completed. This submittal is expected to be the most intensive review effort. The 60% submittal should include changes as necessary to address the 30% submittal review comments.

In addition to plans, specifications and cost estimates, the 60% submittal shall include a preliminary construction schedule. This will be incorporated into the bid process for the Project as a guide to the Contractor.

### 6.3 90% Plans, Specifications and Cost Estimates

The 90% plans, specifications and cost estimate should be a complete drawing and specifications set at or near the level of completion required for regulatory review and permitting, and fully respond to the comments received on the 60% submittal. The construction schedule submitted with the 60% submittal should be updated as needed.

### 6.4 100% Design Plans, Specifications and Cost Estimates

The 100% submittal shall resolve comments received on the 90% submittal. The 100% submittal shall be a fully completed, signed, and sealed Plan and Specifications set that is ready for final review and approval from the City, County, and USFS.



#### 6.5 Bid Set Plans, Specifications and Cost Estimates

The 100% submittal will be revised as necessary to incorporate any permit conditions or remaining comments from the reviewing agencies to form the Bid Set of documents, which will be used for Contractor bidding. A complete specification set, including relevant standard provisions, special provisions, technical provisions, appendices, notice to bidders and bid documents will be included. The designer shall include in the specifications any applicable permitting requirements to be provided by the Planning Consultant.

#### 6.5 Bid Support Services

The Design team will support the City's bidding process by responding to bidders questions pertaining to the final plans and specifications, attending the pre-bid conference and site visit, and preparing bid document addenda if clarifications or changes to the Final Contract Documents including plans and specifications are needed. Changes to drawings will be made digitally and/or shown on 8.5 x 11 sheets to the extent possible, and will be signed and stamped upon written request of the City. If changes are required, the designer shall prepare a conformed set of stamped construction Contract Documents after construction bids are received for use during construction.

#### 7.0 **Construction Support Services**

At its discretion the City of Berkeley may amend the scope of work to include construction support services, however due to uncertainty of the scope of the effort, this task will not be included in the initial contract award. These tasks are expected to include submittal reviews, responses to requests for information, change order assistance, and construction record drawings. Proposers are encouraged to provide qualifications regarding these future services within their proposal package.

### **III. SUBMISSION REQUIREMENTS**

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point. There are no page limitations.

1. Contractor Identification:  
Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number.
2. Client References:  
Provide a minimum of three (3) client references for projects completed within the last five (5) years. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.
3. Proposed Approach and Scope of Work:  
Based on the City's outline of services in this RFP, the proposer shall prepare a complete description of the proposed scope of services that the proposer intends to perform in order to achieve the Project objectives. The proposer may identify services that differ from the outline of services included in the RFP if the proposer believes the chances will assist the City to more efficiently and effectively achieve the project objectives. The proposer's scope of services shall include, at a minimum, a description of the major components of services or phases or service, and a description of work products ("deliverables") to be provided by the proposer to the City.
4. Proposed Schedule:  
Include a schedule reflecting the proposed completion date of each major task identified in the Scope of Work. Any assumptions used to generate the schedule should be clearly stated. Assume a notice to proceed date of October 2, 2017.
5. Price Proposal:  
The proposal shall include pricing for all services. Pricing shall be all inclusive unless indicated otherwise on a separate pricing sheet. A detailed price proposal which identifies the employee, employee classifications,

hourly rate, and estimated hours to complete each task shall be included in the proposal. The employees shown in the price proposal should be the specific individuals that you propose and commit to accomplish the work. Note that mark up of direct or sub-consultant costs by a fixed percent is not allowed. Appropriate time for actual tasks related to sub-consultant management and direct costs should be included and identified in the cost proposal, if applicable. The price proposal should be broken down by tasks and subtasks consistent with the proposed scope of services provided by the proposer.

Per federal regulations, the City is required to assess and negotiate profit as a separate element of total project cost. As such the proposer must submit a summary of the basis of proposed billings rates that provides the percent profit/fee used in billing rates for the prime and each sub consultant.

6. Contract Terminations:

**If your organization has had a contract terminated in the last five (5) years, describe such incident.** Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

7. Qualifications:

Provide a brief narrative of the qualifications of the firm and the specific individuals proposed to accomplish the work, consistent with the Price Proposal. Include a resume for key team members identified in the price proposal.

8. Relevant Experience:

Provide at least three (3) projects to demonstrate relevant experience. In particular experience working with or for insurance and/or FEMA funded Projects, design of camp facilities, and cost estimating for projects of similar size and scope are desired.

9. Affirmative steps to solicit from disadvantaged business:

If sub-consultants are proposed, the Prime Contractor must comply with regulation 44 C.F.R. 13.36(e)(1), which requires affirmative steps to assure that minority firms, women's business enterprises, and labor area surplus firms are used when possible:

- The Prime Contractor must place qualified small and minority businesses and women's business enterprises on a solicitation list. The use of the services of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce is encouraged.
- The Prime Contractor must assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
- The Prime Contractor must divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business enterprises.
- The Prime Contractor must establish delivery schedules, where the scope or work requirements permit, which encourage participation by small and minority businesses and women's business enterprises.
- Compliance with 44 C.F.R. 13.36(e)(1) must be documented by an affirmative statement of compliance by the Prime Consultant within the response to this solicitation.

10. The response to this solicitation should clearly demonstrate responsibility of respondent, including but not limited to:

- The adequacy of the Contractor’s financial resources to perform the contract, or the ability to obtain them;
- The ability of the Contractor to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- Satisfactory performance record;
- Satisfactory record of integrity and business ethics;
- The necessary organization, experience, accounting and operational control, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors);
- The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- That the contractor is qualified and eligible to receive an award under applicable laws and regulations.
- Compliance with this requirement must be documented by an affirmative statement of compliance by the Prime Consultant within the response to this solicitation.

#### **IV. SELECTION CRITERIA & BASIS OF AWARD**

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Proposed Approach and Scope of Work 35%
2. Proposed Schedule 5%
3. Qualifications & Relevant Experience 40%
4. Cost Proposal 20%

The City may, at its discretion, conduct interviews of two (2) or more of the highest ranked proposers. Interview evaluation factors and their importance and relative weight will be provided to proposers at the time they are invited to interview. Interviews are tentatively scheduled for August 11<sup>th</sup> and August 14, 2017.

The award will be made to the respondent whose proposal represents the best overall value, and is most advantageous to the City, price and other factors considered.

#### **V. PAYMENT**

**Invoices:** This work will be awarded as a fixed fee (i.e. lump sum) contract. Each invoice must demonstrate the percent complete by task. Consistent with federal grant requirements, detailed invoice backup will be required, including but not limited to hours worked by employee classification and billing rate for the billing period where applicable, and a Project Status Report which provides a summary of work accomplished during the billing period. A Project Status Report template will be provided by the City.

Mail invoices to the Project Manager and reference the contract number.

City of Berkeley  
Accounts Payable  
PO Box 700  
Berkeley, CA 94701  
Attn: **Liza McNulty, Project Manager**

Payments: The City will make payment to the vendor within 30- days of receipt of a correct and complete invoice.

## **VI. CITY REQUIREMENTS**

### **A. General**

The successful consultant shall be required to comply with all Federal and State law and the Berkeley Municipal Code, resolutions and ordinances. The City's boilerplate contract is attached to this proposal as Attachment E

### **B. Non-Discrimination Requirements:**

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal.**

### **C. Conflict of Interest:**

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

### **D. Statement of Economic Interest:**

The City's Conflict of Interest Code designates "consultants" as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

## **VII. OTHER REQUIREMENTS**

### **A. Insurance**

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 per occurrence to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

### **B. Worker's Compensation Insurance:**

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

### C. Business License

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300). Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

### D. Recycled Paper

**All reports to the City shall be on recycled paper that contains at least 50% recycled product** when such paper is available at a cost of not greater than ten percent more than the cost of virgin paper, and when such paper is available at the time it is required. If recycled paper is not available the Contractor shall use white paper. Written reports or studies shall be *printed on both sides of the page* whenever practical.

### E. State Prevailing Wage:

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages.

Wage information is available through the California Division of Industrial Relations web site at:  
[http://www.dir.ca.gov/OPRL/statistics\\_and\\_databases.html](http://www.dir.ca.gov/OPRL/statistics_and_databases.html)

### F. FEMA Supplemental Requirements:

The Berkeley Tuolumne Project is partially funded by a FEMA Public Assistance Grant. Supplementary Contract conditions are provided in Attachment E.

**VIII. SCHEDULE (dates are subject to change)**

- |   |                      |
|---|----------------------|
| <input type="checkbox"/> Issue RFP to potential bidders       | July 14, 2017        |
| <input type="checkbox"/> Non-Mandatory Site Visit             | July 21, 2017        |
| <input type="checkbox"/> Questions Due                        | July 28, 2017        |
| <input type="checkbox"/> Proposals due from potential bidders | August 8, 2017       |
| <input type="checkbox"/> Interviews                           | August 11 & 14, 2017 |
| <input type="checkbox"/> Council Approval of Contract         | September 26, 2017   |
| <input type="checkbox"/> Notice to proceed (NTP)              | October 2, 2017      |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

Attachments:

- |   |              |
|---|--------------|
| • Check List of Required items for Submittal      | Attachment A |
| • Non-Discrimination/Workforce Composition Form   | Attachment B |
| • Right to Audit Form                             | Attachment C |
| • Insurance Endorsement                           | Attachment D |
| • City Professional Services Boilerplate Contract | Attachment E |
| • FEMA Supplemental Contract Requirements         | Attachment F |

## ATTACHMENT A

### CHECKLIST

- Proposal including (one (1) unbound original and three (3) bound copies)
- Proposed Scope of Services
- Contractor Identification and Company Information
- Client References
- Proposed Schedule
- Price Proposal, including rate basis details
- Statement of Qualifications, included relevant resumes
- Description of Relevant Experience
- Statement regarding affirmative steps to solicit from disadvantaged businesses, if applicable
- Statement affirming the Prime Consultant is a responsible respondent, per Section III.8
- Disclosure of Contract Terminations
- The following form, completed and **signed in blue ink** (attached):
  - Non-Discrimination/Workforce Composition Form Attachment B

### **ADDITIONAL SUBMITTALS REQUIRED FROM SELECTED VENDOR AFTER COUNCIL APPROVAL TO AWARD CONTRACT.**

- Provide Evidence of Insurance
  - Auto
  - Liability
  - Worker's Compensation
- Right to Audit Form Attachment C
- Commercial General & Automobile Liability Endorsement Form Attachment D
- Berkeley Business License

**For informational purposes only: Sample of Personal Services Contract can be found on the City's website on the current bid and proposal page at the top of the page.**

**NON-DISCRIMINATION/WORKFORCE COMPOSITION FORM FOR NON-CONSTRUCTION CONTRACTS**

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract:

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Business Lic. #: \_\_\_\_\_

Occupational Category:  (See reverse side for explanation of terms)	Total Employees		White Employees		Black Employees		Asian Employees		Hispanic Employees		Other Employees	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
	Official/Administrators											
Professionals												
Technicians												
Protective Service Workers												
Para-Professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other (specify)												
Totals:												

Is your business MBE/WBE/DBE certified? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, by what agency? \_\_\_\_\_

If yes, please specify: Male: \_\_\_\_\_ Female: \_\_\_\_\_ Indicate ethnic identifications: \_\_\_\_\_

Do you have a Non-Discrimination policy? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

City of Berkeley Contract Compliance Officer



## Occupational Categories

**Officials and Administrators** - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

**Professionals** - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

**Technicians** - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

**Protective Service Workers** - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

**Para-Professionals** - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Transporters" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

**Office and Clerical** - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

**Skilled Craft Workers** - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

**Service/Maintenance** - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

**CITY OF BERKELEY**  
**Right to Audit Form**

The contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to/any findings before a final audit report is filed.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

Contract Description/Specification No: **Berkeley Tuolumne Camp Design / 17-11131-C**

Please direct questions regarding this form to the Auditor's Office, at (510) 981-6750.

**Attachment C**

**CITY OF BERKELEY**  
**Commercial General and Automobile Liability Endorsement**

The attached Certificates of Insurance are hereby certified to be a part of the following policies having the following expiration dates:

Policy No.	Company Providing Policy	Expir. Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The scope of the insurance afforded by the policies designated in the attached certificates is not less than that which is afforded by the Insurance Service Organization's or other "Standard Provisions" forms in use by the insurance company in the territory in which coverage is afforded.

Such Policies provide for or are hereby amended to provide for the following:

1. The named insured is \_\_\_\_\_.
2. CITY OF BERKELEY ("City") is hereby included as an additional insured with respect to liability arising out of the hazards or operations under or in connection with the following agreement:  
\_\_\_\_\_.

The insurance provided applies as though separate policies are in effect for both the named insured and City, but does not increase the limits of liability set forth in said policies.

3. The limits of liability under the policies are not less than those shown on the certificate to which this endorsement is attached.
4. Cancellation or material reduction of this coverage will not be effective until thirty (30) days following written notice to \_\_\_\_\_, Department of \_\_\_\_\_, Berkeley, CA.
5. This insurance is primary and insurer is not entitled to any contribution from insurance in effect for City.

The term "City" includes successors and assigns of City and the officers, employees, agents and volunteers.

\_\_\_\_\_  
Insurance Company

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Signature of Underwriter's  
Authorized Representative

Contract Description/Specification No: **Berkeley Tuolumne Camp Design / 17-11131-C**

**Attachment D**

## AGREEMENT FOR CONSULTING SERVICES

This is an Agreement between the City of Berkeley, a Charter City organized and existing under the laws of the State of California ("City"), and \_\_\_\_\_ ("Consultant"), a California [corporation, partnership, joint venture], doing business at \_\_\_\_\_ who agree as follows:

### RECITALS

WHEREAS, this Agreement sets forth the terms and conditions under which City shall obtain and Consultant will provide the services identified in Appendix "A" attached hereto;

Now, THEREFORE, City and Consultant agree as follows:

#### 1. DEFINITIONS

- 1.1 Where any word or phrase defined below, or a pronoun in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.
  - 1.1.1 Agreement: This Agreement together with all attachments and appendices and other documents incorporated herein by reference.
  - 1.1.2 Project: Total design of \_\_\_\_\_ of which the Work performed under this Agreement may be whole or part.
  - 1.1.3 Project Manager: Person or persons designated by City and authorized to act on City's behalf with respect to this Agreement.
  - 1.1.4 Work: The work described in Appendix A "Scope of Services", and made a part of this Agreement.

#### 2. TERM OF THIS AGREEMENT

- 2.1 This Agreement shall begin on \_\_\_\_\_ and end on \_\_\_\_\_. The City Manager of the City or his/her designee may extend the term of this Agreement by giving written notice.

#### 3. SERVICES CONSULTANT AGREES TO PERFORM

Consultant agrees to perform the services provided for in Appendix "A", as authorized from time to time by City in writing, in the manner provided in this Agreement. Time is of the essence in the performance of this Agreement.

#### 4. COMPENSATION

- 4.1 Compensation shall be due Consultant according to the Compensation Schedule established in Appendix "B", "Compensation for Services," in a total amount not to exceed \$\_\_\_\_\_. Consultant shall invoice its time at its ordinary billing rates.
- 4.2 City will not withhold the entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount. Payment for questioned amount(s) will be made upon City's receipt of any requested documentation verifying the questioned amount(s) and City's determination that the questioned amount(s) is reimbursable under the terms of this Agreement.
- 4.3 Invoices furnished by Consultant under this Agreement must be in a form acceptable to City. All amounts paid by City to Consultant shall be subject to audit by City. Payment shall be made by City to Consultant at the address stated in Appendix "A".

#### 5. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROVISIONS

- 5.1 In performing this Agreement, Consultant agrees to comply with all applicable terms governing FEMA Public Assistance Grants as set forth in Appendix "C".

**Attachment E p. 1**

6. QUALIFIED PERSONNEL; NO SUBCONSULTING

- 6.1 Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant. Consultant will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Consultant.
- 6.2 Consultant agrees that any personnel referred to in Appendix "A" will continue their assignments on the Project during the entire term of this Agreement, as described in Appendix "A."
- 6.3 Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

7. REPRESENTATIONS

- 7.1 Consultant represents that it is qualified to perform the Work and that it possesses the necessary licenses and/or permits required to perform the Work or will obtain such licenses and/or permits prior to time such licenses and/or permits are required.
- 7.2 Consultant represents that the Work shall be performed in a professional manner and shall conform to the standards of practice observed on similar, successfully completed projects by specialists in the Work to be provided. Consultant agrees that, if the Work is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall reperform or replace unsatisfactory Work at no additional expense to City.
- 7.3 The granting of any progress payment by City, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of City, or State certification, shall in no way waive or limit the certification obligations in this Paragraph or lessen the liability of Consultant to reperform or replace unsatisfactory Work, including but not limited to cases where the unsatisfactory character of such work may not have been apparent or detected at the time of such payment, inspection, review or approval.
- 7.4 Nothing in this Paragraph shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Consultant may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

8. INDEMNIFICATION BY CONSULTANT

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless the City and its officers, agents, departments, officials, representatives and employees (collectively "**Indemnitees**") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities. With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees other than for Liabilities that are caused in whole or in part by the sole negligence, active negligence or willful misconduct of such Indemnitee.

9. LIABILITY OF CITY

- 9.1 Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

## 10. INDEPENDENT CONTRACTOR; PAYMENT OF TAXES AND OTHER EXPENSES

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the services required of Consultant by the terms of this Agreement. Consultant shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Consultant.
- 10.2 Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Consultant's Work only and not as to the means or methods by which such a result is obtained.
- 10.3 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement.
- 10.4 Payment of any taxes, including California Sales and use Taxes, levied upon this Agreement, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Consultant.

### 6+1. INSURANCE

- 6+1.1 Prior to the execution of this Agreement, Consultant shall furnish to City satisfactory proof that Consultant has taken out for the entire period covered by this Agreement, as further defined below, the following insurance in a form satisfactory to City and with an insurance carrier satisfactory to City, authorized to do business in California and rated by A. M. Best & Company A minus or better, financial category size seven (7) or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the services of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:
  - 6+1.1.1 Commercial general liability insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$2,000,000 general aggregate and \$2,000,000 each occurrence, subject to a deductible of not more than \$25,000 payable by Consultant.
  - 6+1.1.2 Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than \$10,000 payable by Consultant.
  - 6+1.1.3 Full workers' compensation insurance for all persons whom Consultant may employ in carrying out Work contemplated under Contract, in accordance with Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act", approved May 26, 1913, and all Acts amendatory or supplemental thereto. Workers' compensation policy shall include Employer Liability Insurance with limits not less than \$1,000,000 each accident.
  - 6+1.1.4 Professional Liability Insurance, specific to this Project only, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$50,000 each claim, with no exclusion for claims of one insured against another insured.

6+1.2 Insurance policies shall contain an endorsement containing the following terms:

6+1.2.1 City, and its directors, officers, partners, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

6+1.2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

6+1.2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City thirty (30) days in advance of the effective date thereof.

6+1.2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than the Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

6+1.3 Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Contract, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subparagraph 10.2.3.

6+1.4 At the time of making an application for an extension of time, Consultant shall submit evidence that insurance policies will be in effect during requested additional period of time.

6+1.5 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.

6+1.6 If Consultant fails to maintain any required insurance, City may take out such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.

6+1.7 Consultant shall forward all insurance documents to, \_\_\_\_\_, Office of Capital Projects, 1947 Center Street, First Floor, Berkeley, CA 94704.

## 7+2. SUSPENSION OF WORK

City may, without cause, order Consultant, in writing, to suspend, delay or interrupt Work pursuant to this Agreement, in whole or in part, for such periods of time as City may determine, in its sole discretion. Suspension shall be effected by delivery to Consultant of a written notice of suspension specifying the extent to which performance of the Work under this Agreement is suspended, and the date upon which the suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered. Suspension of Work shall be treated as an excusable delay.

## 8+3. TERMINATION OF AGREEMENT FOR CAUSE

8+3.1 If at any time City believes Consultant may not be adequately performing its obligations under this Agreement or may fail to complete the Work as required by this Agreement, City may request from Consultant written assurances of performance and a written plan to correct observed deficiencies in Consultant's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes grounds to declare a default under this Agreement.

8+3.2 Consultant shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate Consultant's right to proceed under the Agreement, for cause, should Consultant commit a breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan.)

843.3 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered.

#### 14. TERMINATION OF AGREEMENT FOR CONVENIENCE

844.1 City may terminate performance of the Work under the Agreement in accordance with this Paragraph in whole, or from time to time in part, whenever City shall determine that termination is in the best interest of City. Termination shall be effected by delivery to Consultant of notice of termination specifying the extent to which performance of the Work under the Agreement is terminated, and the date upon which termination becomes effective, which shall be no less than twenty-one (21) calendar days from the date the notice of termination is delivered. Consultant shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

844.2 Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Consultant after the effective date of a notice of termination.

844.3 Termination under this provision shall not be construed as a waiver of any right or remedy otherwise available to City.

#### 945. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

Consultant understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

#### 1046. NOTICES TO THE PARTIES

All notices to be given by the parties hereto shall be in writing and effective when served by depositing same in the United States Post Office, postage prepaid and addressed as follows:

To City:

To Consultant:

#### 1147. OWNERSHIP OF RESULTS/WORKS FOR HIRE

1147.1 When this Agreement is terminated, Consultant agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this Agreement. All materials shall be returned in the same condition as received.

1147.2 Any interest of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets or other documents prepared by Consultant or its subcontractors or subconsultants in connection with services to be performed under this Agreement shall become the property of City. Consultant may, however, retain one copy for its files.

1147.3 Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes or any original works of authorship created by Consultant or its subcontractors or subconsultants in connection with services performed under this Agreement shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event that it is ever determined that any such works created by Consultant or its subcontractors or subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to City. With the prior written approval of City's Project Manager, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.



1248. AUDIT AND INSPECTION OF RECORDS

1248.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, and documents of any sort prepared by or furnished to Consultant during the course of performing the Work and providing services with respect to the Project, for a period of at least three (3) years following final completion and acceptance of the Project, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. All such records shall be available to City upon request at reasonable times and places. Monthly records of Consultant's personnel costs, consultant costs, and reimbursable expenses shall be kept on a generally recognized accounting basis, and shall be available to City upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising City and allowing City to accept and store the records.

1248.2 Consultant agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Consultant shall permit City to audit, examine and make copies, excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Paragraph.

1248.3 The rights and obligations established pursuant to this Paragraph shall be specifically enforceable and survive termination of this Agreement.

1349. DISPUTES

1349.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Project Manager and a principal of the Consultant who shall decide the true meaning and intent of the Agreement. Such referral may be initiated by written request from either party and a meeting between the City's Project Manager and principal of the Consultant shall take place within five days of the request.

1349.2 Consultant shall continue its Work throughout the course of any and all disputes, and Consultant's failure to continue work during any and all disputes shall be considered a material breach of this Agreement, provided City continues to make payment to Consultant for undisputed work completed by Consultant. Consultant further agrees that should Consultant stop work due to a dispute or disputes, any and all claims, whether in law or in equity Consultant may have against City, their officers, agents, representatives, and employees, whether such claims are pending, anticipated or otherwise, shall be deemed to have been waived and forever barred.

20. AGREEMENT MADE IN CALIFORNIA/VENUE

20.1 This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County, California.

20.2 This Agreement shall be executed in duplicate. One duplicate original shall be retained by City and one duplicate original shall be given to Consultant.

1421. CONFORMITY WITH LAW AND SAFETY

1421.1 Consultant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations. All services performed by Consultant must be in accordance with these laws, ordinances, codes and regulations. Consultant's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the work hereunder shall constitute a breach of contract.

1421.2 If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Consultant shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Consultant shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Consultant's subcontractor or subconsultant, if any; 3) name and address of Consultant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

1421.3 If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Consultant shall immediately notify the Berkeley Police Department and the City's Health Protection office.

1421.4 Consultant shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

## 1522. MATERIAL SAFETY DATA SHEETS

1522.1 To comply with the City's Hazardous Communication Program, Consultant agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Consultant intends to use in the performance of work under this Contract in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 *et seq.*). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before Consultant may use that product.

1522.2 City will inform Consultant about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

## 1623. NON-DISCRIMINATION

Consultant hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Consultant agrees as follows:

1623.1 Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

1623.2 Consultant shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Consultant shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

## 1724. CONFLICT OF INTEREST PROHIBITED

1724.1 In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Consultant nor any employee, officer, director, partner or member of Consultant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

1724.2 In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Consultant, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Consultant.

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1724.3 Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

1825. NUCLEAR FREE BERKELEY

Consultant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

26. OPPRESSIVE STATES CONTRACTING PROHIBITION

1826.1 In accordance with Resolution No. 59,853-N.S., Consultant certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

1826.2 Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this contract: Tibet Autonomous Region and the provinces of Adu, Kham, and Ü-Tsang.

1826.3 Consultant's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 12. In the event that the City terminates Consultant due to a default under this provision, City may deem Consultant a non-responsible bidder for five (5) years from the date this Contract is terminated.

27. RECYCLED PAPER FOR WRITTEN REPORTS

If Consultant is required by this Contract to prepare a written report or study, Consultant shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Consultant shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the paper whenever practical.

28. BERKELEY LIVING WAGE ORDINANCE

28.1. Consultant hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Consultant is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Consultant will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Consultant expressly acknowledges that, even if Consultant is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Consultant to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

28.2. If Consultant is currently subject to the Berkeley Living Wage Ordinance, Consultant shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Consultant for health benefits, if any, for each of its employees providing services under the Contract. Consultant agrees to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17.

28.3. If Consultant is currently subject to the Berkeley Living Wage Ordinance, Consultant shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Consultant engages to execute its responsibilities under this Contract. All subcontractor or subconsultant employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

- 28.4. If Consultant fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- 28.5. Consultant's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 12. In the event that City terminates Consultant due to a default under this provision, City may deem Consultant a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Consultant may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Consultant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Consultant's breach. City may deduct any assessed liquidated damages from any payments otherwise due Consultant.

## 29. BERKELEY EQUAL BENEFITS ORDINANCE

- 29.1. Consultant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Consultant is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Consultant will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.
- 29.2. If Consultant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Consultant agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 of this contract.
- 29.3. If Consultant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- 29.4. Consultant's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Sections 12. In the event the City terminates this contract due to a default by Consultant under this provision, the City may deem Consultant a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Consultant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Consultant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Consultant's breach. City may deduct any assessed liquidated damages from any payments otherwise due Consultant.

## 30. PREVAILING WAGES

Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, Consultant is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the pertinent prevailing wage. Consultant shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

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31. SETOFF AGAINST DEBTS

Consultant agrees that City may deduct from any payments due to Consultant under this Contract any monies that consultant owes City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

32. CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. § 18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Consultant's service.

33. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Consultant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Consultant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Consultant shall pay all state and federal income taxes and any other taxes due. **Consultant certifies under penalty of perjury that the taxpayer identification number written below is correct.**

34. MISCELLANEOUS

34.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information.

34.2 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of City and the Consultant.

34.3 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by City's Project Manager of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

34.4 Any provisions or portions thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, or made unlawful or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

SEVERABILITY

35.1 If any part of this Agreement or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

THE CITY OF BERKELEY

By: \_\_\_\_\_  
CITY MANAGER

Registered by:

Pre-approved as to form:  
CITY ATTORNEY  
2/2015

\_\_\_\_\_  
CITY AUDITOR

Attest:

CITY CLERK

[ CONSULTANT NAME ]

By: \_\_\_\_\_

Printed name and title of signatory, if different from consultant name

Taxpayer Identification No.

Berkeley Business License No.

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Woman Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Minority Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROVISIONS**

**1. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- c. Withholding for unpaid wages and liquidated damages. The City of Berkeley shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**2. CLEAN AIR ACT**

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to the City of Berkeley and understands and agrees that the City of Berkeley will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

3. **FEDERAL WATER POLLUTION CONTROL ACT**

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The contractor agrees to report each violation to the City of Berkeley and understands and agrees that the City of Berkeley will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

4. **SUSPENSION AND DEBARMENT**

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the City of Berkeley. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Berkeley, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The City will insure the Contractor and any lower participants are not debarred by checking the government's System Award Management (SAM).
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5. **PROCUREMENT OF RECOVERED MATERIALS**

- a. The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. For contracts meeting this threshold the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired:
  - 1) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - 2) Meeting contract performance requirements; or
  - 3) At a reasonable price.
- b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.



6. **ACCESS TO RECORDS**

The following access to records requirements apply to this contract:

- a. The contractor agrees to provide Cal OES, the City of Berkeley, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

7. **RETENTION OF RECORDS**

Retention of Records. The contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the City of Berkeley California Office of Emergency Services, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

8. **NOTICE OF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) REPORTING REQUIREMENTS AND REGULATIONS**

- a. General. The City of Berkeley is using Public Assistance grant funding awarded by FEMA to the California Office of Emergency Services (Cal OES) to pay, in whole or in part, for the costs incurred under this contract. As a condition of Public Assistance funding under major disaster declaration FEMA-DR-4158, FEMA requires the City of Berkeley to provide various financial and performance reporting.
  - 1) It is important that the contractor is aware of these reporting requirements, as the City of Berkeley may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to Cal OES which, in turn, will enable Cal OES to satisfy reporting requirements to FEMA.
  - 2) Failure of Cal OES to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of Federal financial assistance awarded to fund this contract.
- b. Applicable Regulations and Policy. The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
  - 1) 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
  - 2) 44 C.F.R. § 13.41 (Financial Reporting)
  - 3) 44 C.F.R § 13.50(b) (Reports)
  - 4) 44 C.F.R. § 206.204(f) (Progress Reports)

- c. The Cal OES is required to submit to the following financial reports to FEMA:
- 1) Initial Report. An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project under FEMA-DR-4158.
  - 2) Quarterly Reports. Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
  - 3) Final Report. A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

9. **ENERGY EFFICIENCY**

Energy Conservation. The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

10. **BYRD ANTI-LOBBYING AMENDMENT 31 U.S.C. § 1352 (AS AMENDED)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification (see Appendix A, 44 C.F.R Part 18 – Certification Regarding Lobbying). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

11. **DEPARTMENT OF HOMELAND SECURITY SEAL, LOGO, AND FLAGS**

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS officials without specific FEMA pre-approval.

12. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS**

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

13. **NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor or any other party pertaining to any matter resulting from the Contract.

14. **FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.