



Finance Department
General Services Division

REQUEST FOR PROPOSALS (RFP)
Specification No. 18-11238-C
FOR
BERKELEY TUOLUMNE CAMP TREE HAZARD MITIGATION
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY

Dear Proposer:

The City of Berkeley is soliciting written qualifications and proposals from qualified firms or individuals for Tree Hazard Mitigation services. As a Request for Proposals (RFP) this is not an invitation to bid.

The project scope, content of submittal, and vendor selection process are summarized in the RFP (attached). Responses must be received no later than 2:00 pm, **on Tuesday, June 11, 2019**. All responses must be in a sealed envelope and have “**BERKELEY TUOLUMNE CAMP – TREE HAZARD MITIGATION**” and **Specification No. 18-11238-C** clearly marked on the **outer most mailing envelope**. Please submit one (1) unbound original and two (2) bound 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

Responses will not be accepted after the date and time stated above. Incomplete responses that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to negotiate or award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of responses for the subject work. The City retains the right to award all or parts of this contract to several firms or individuals, to not select any of the firms or individuals, and/or to re-solicit Statements of Qualifications. The act of submitting a response 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, Capital Improvement Program Manager**, via email at LMcNulty@cityofberkeley.info no later than Friday, May 31st at 5 pm. Answers to questions will **not** be provided by telephone or email. Rather, answers to all question or any addenda will be **posted** on the City of Berkeley 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-submittal site visit is scheduled for Wednesday, May 29th at 10 am. RSVP in advance to Liza McNulty, Project Manager, at LMcNulty@cityofberkeley.info.

We look forward to receiving and reviewing your response.

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 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 treatment 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. At this time many hazardous trees also remain within the site limits, or within striking distance of the reconstruction site.

II. SCOPE OF SERVICES

In addition to the scope described herein, resources for proposal scope and price preparation include:

- Figure 1: Site Plan & Removal Trees (includes points for each tree to be removed, exclusion areas, site structures/features to be protected and site water/riparian features), attached.
- Figure 2: Site Slopes, attached.
- Figure 3: Tree Marking Method
- Exhibit 1: Management Requirements, attached.
- Exhibit 2: Forest Service General Conditions, attached.
- Exhibit 3: Cost Proposal Form
- Exhibit 5: Downed Wood Debris Removal Area & Photos, attached.
- Exhibit 5: Tree Database, attached.
- Exhibit 6: Tree Geodatabase: By request (via email to Project Manager at LMcNulty@cityofberkeley.info)

The City has acquired all necessary permits from the United States Forest Service for the execution of the work described herein.

General Requirements

The City of Berkeley is seeking proposals from qualified Licensed Timber Operators (LOTs) or C-61/D-49 Tree Service Contractors to provide Tree Removal and Pruning services on US Forest Serve Land located in Tuolumne County. The services requested will include all operations related to the safe, legal, efficient removal and disposal of hazardous, dead and/or dying trees. Said services must meet all applicable Federal, State, and/or Local regulations. In order to be awarded the contract, the Contractor shall possess, and provide to the City, Timber Operator's License or a C-61/D-49 Tree Service Contractor license issued by the State of California Contractor's Licensing Board. See also Exhibit 2, Forest Service General Conditions.

The goal of the Project is to remove all hazardous trees, prune hazardous branches, and remove all wood debris from the site (both existing and created through tree removal and pruning work described herein) such that the Project area is safe from tree hazards, and reconstruction of Berkeley Tuolumne Camp can occur without additional tree-related debris removal. This work is anticipated to be executed in late July or early August, pending FEMA approvals. This work is funded in part by a FEMA Public Assistance Grant, and is subject to Federal reporting requirements related to that grant.

Equipment

Equipment shall be furnished on a fully operational basis, of modern design, and in good operating condition, with competent, fully qualified operators. The Contractor shall provide all transportation of equipment, tools, personnel, and supplies to the work sites. Contractor shall be responsible for all fuel, lubrication, repair, and replacement for Contractor's equipment. All chainsaws and other motorized equipment shall be equipped with Forest Service approved spark arrestors and meet California Division of Industrial Safety specifications. The following are minimum equipment requirements:

- Must be in good running condition with no fluid leaks or overheating problems;
- Must be equipped with tools and supplies necessary for making emergency and routine repairs and servicing;
- Canopy approved by the State of California, Division of Industrial Safety;
- Power or hand saw may be needed;
- Machines shall have capability to operate on slopes present at the site as needed to accomplish the scope described herein (See Figure 3, Site Slope).
- Machines shall have limited compaction impacts. Ground pressure shall not exceed a maximum of 9 psi;
- Portable diesel engines shall be compliant with California's Air Resource Board's (ARB) portable diesel engine Airborne Toxic Control Measure (ATCM) and registered under ARB's Statewide Portable Equipment Registration Program (PERP) <https://www.arb.ca.gov/portable/portable.htm>.

Traffic Control

Closure of Hardin Flat Road for the duration of the work is not anticipated, however temporary traffic controls to allow for completion of the work may be required. The Contractor shall be familiar with traffic control associated ordinances and codes and shall be responsible for providing traffic control, including signage, barriers, and flaggers as required to complete the work. Personal vehicles of the Contractor's employees shall not be parking on the traveled way or shoulders. Vehicles may be parked within the Camp area.

Safety

Contractor shall comply with all applicable provisions of the California Occupational Safety and Health Act of 1973, including any amendments thereto, and the rules, standards, orders and regulations prescribed by the Occupational Safety and Health Standards Board and the Division of Industrial Safety of the California Department of Industrial Relations. Contractor shall further comply with all other applicable safety laws, ordinances and regulations. Contractor shall provide proof of compliance, if requested by the City.

Damage to City Structures

Contractor shall be responsible for all damages to City structures onsite. Contractor shall take all necessary precautions to avoid and mitigate any damages to existing structures and trees to be preserved, including the Thimbleberry Creek culvert on site.

Task 1: Tree Removals

This Task involves felling, tractor yarding, and disposal of approximately 1,807 hazardous trees. Initiation of this work is anticipated to occur in late July or early August, pending Federal Emergency Management Agency (FEMA) approvals. The tree removals are located within the immediate vicinity of the Berkeley

Tuolumne Camp (BTC or Camp) on Hardin Flat Road (approximate address 331585 Hardin Flat Road, Groveland, California). Figure 1 depicts the Project area, trees to be removed, and various site features or constraints. Figure 2 depicts the slopes within the Project area. A summary of the removal trees is below:

Removal Trees by DBH (Diameter at Breast Height)

<10"	819
10" - 16"	431
16" - 26"	373
26" - 36"	139
36" - 48"	37
48" - 60"	8
TOTAL	1807

Specific project treatments are as follows:

- All trees should be felled in accordance with the US Forest Service Management Requirements (Exhibit 1). These requirements will be discussed at the mandatory field tour.
- All trees greater than 4" DBH within the Project area have been assessed (2,179 total trees). A geodatabase (point file) of these trees is available by request (Exhibit 6). The geodatabase includes a unique tree & tag numbers, species, height, DBH, condition and treatment (remove, prune, preserve). Trees to be felled are marked in a variety of ways (see Figure 3).
 - All trees within Area 1 are tagged. Removal vs. preservation shall be determined based on tag number and geodatabase.
 - Within Area 2:
 - 15 Trees are un-tagged, to be preserved. These trees are included in the geodatabase, and shall be field identified and marked by the Contractor.
 - All remaining un-tagged trees > 4" DBH within Area 2 are to be removed
 - 382 Trees within Area 2 have been tagged; removal vs. preservation of these trees shall be determined based on tag identification and geodatabase.
- Trees to be preserved and remnant structures on the site (tent cabin frames, restroom building, Thimbleberry Creek culvert and River weirs) to be protected during tree removals.
- Trees to be cut as near to flush with the ground as feasible, except where indicated otherwise by City Project Manager. No stump removal or stump grinding.
- Tractor yard and haul away log segments greater than or equal to 4 inches in diameter on the small end and greater than or equal to 6 feet in length, except as noted below. Disposal of logs and log segments is the responsibility of the Contractor. Tuolumne County provides a Wood Sort Yard for log/wood debris, located at 8445 Enterprise Drive. The Wood Sort Yard hours of operation are 7 a.m. to 5 p.m, Monday-Friday. Confirmation that the Wood Sort Yard will accept the trees/wood debris is the responsibility of the Contractor.
 - It is expected that hazardous trees removed for this Project will not be merchantable due to their condition (dead, burned, beetles, etc.).
 - Logs shall be stacked neatly on site for future use meeting the following criteria:
 - Up to approximately 1,600 feet (total) of logs 24-inches in diameter (+/- 2 inches), cut to 10-foot, 20-foot or 30-foot long segments.
 - Up to approximately 8,400-feet (total) of logs 9-inches in diameter (+/- 3 inches), cut to segments between 20-30 feet long.
- Gather and remove from the site debris (logging slash) created by tree removal activities greater than or equal to 1 inch on the small end and greater than or equal to 3 feet in length.
- Provide signage along Hardin Flat Road at regular intervals during active tree removal work notifying the public that the area is closed for hazardous tree removal work.

All work will be performed following best management practices and CEQA guidelines, as detailed in the California Forest Practice Rules. Figure 1 shows areas to be avoided. No tree removal, equipment access or staging is allowed in the exclusion area. This RFP is being published simultaneously with the "Sun City"

RFP #19-11334, that includes tree removals and demolition work within the exclusion area. The work has been separated into two (2) distinct proposals due to the unique nature of mitigation and monitoring required for execution of the work within the Sun City (exclusion) area. Qualified contractors are allowed and encouraged to submit on both RFPs. The work can be executed concurrently, subject to the requirements outlined in each scope of work.

Access to the south-west, ridge/hilltop vicinity of the Project may be gained via an existing cleared access route from Hardin Flat Road in the southerly direction.

Task 2: Pruning

The City has identified 50 trees that require pruning to mitigate hazardous conditions. In general, pruning consists of removing deadwood in lower canopy, however a description of the specific pruning needs for each of the 50 trees is provided in the City's geodatabase (see Exhibit 5, pages 54-57, notes column). All trees to be pruned are tagged with a unique identifying Tree/Tag number. All existing structures and trees to be preserved as discussed in Task 1 and Figure 1 shall be protected from damage due to pruning activities. All pruned materials (i.e. slash piles) excluding pine needles, bark and twigs to be removed from the site by the Contractor.

Task 3: Debris Removal: Downed Trees & Branches

As described herein, some tree removals on site have been undertaken by USFS. Although some of those trees were off-hauled, many of the logs were piled and left on site. Additionally, since the Rim Fire in 2013, many trees have fallen within the Camp area. All downed wood logs, branches, and trunks greater than or equal to 4 inches diameter on the large end and greater than or equal to 3 feet in length within the Debris Removal Area shall be removed from the Site by the Contractor, with one exception (large downed tree to remain, see Exhibit 4 last photograph). See Exhibit 4 for a delineation of the Project area subject to this debris removal scope, and representative photographs of the extent of downed trees and branches.

III. SUBMISSION REQUIREMENTS

All submittals shall include the following information, organized as separate sections of the submittal. The SOQ should be concise and to the point. There is no page limitation for the submittal.

A. 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.

B. Qualifications and References:

Provide at least two (2) and up to five (5) references to demonstrate relevant qualifying experience. In particular emphasis on reference projects that demonstrate experience conducting hazard tree mitigation on United States Forest Service (USFS) land, and/or subject to FEMA grant funding is encouraged. Each reference project shall include a client name, title, organization, address, telephone number. Please include copies of insurances and licensure. If Timber Operation's License or C-61/D-49 Contractors license is due to expire during the project duration, proof of renewal must be submitted prior to contract execution.

C. Price Proposal:

Review the attached sample contract, including insurance requirements. Complete Exhibit 3, Proposal Cost Summary Form. Include with Exhibit 3 a detailed cost breakdown of the total proposal amount, including a daily rate, cost of equipment, tree removal, pruning and hauling.

Note that markup 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. If the City is unable to negotiate a fair and reasonable price for the scope of work, the City reserves the right to terminate negotiations and conduct contract

negotiations with the next highest ranked firm without undertaking a new RFP process. The City shall be the sole judge in determining the fairness and reasonableness of the consultants proposed cost/price.

D. 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.

E. 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.

F. 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. CONSULTANT SELECTION PROCESS

Evaluation will include, but is not limited to the criteria below:

1. Price Proposal 75%
3. Qualifications & References 25%

Each proposal will be evaluated against the stated criteria. All proposals will be rated and ranked. The City will then enter into contract negotiations with the highest ranked respondent. If the City is unable to reach agreement with the highest ranked respondents, the City will repeat the negotiation process with the next highest ranked respondent, and so on, if necessary.

The City reserves the right to reject any and all submissions.

V. PAYMENT

Invoices: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. 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. Digital submittal of invoices is acceptable.

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.

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 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.

(Worker's Compensation Insurance cannot be waived for any person who employs others.)

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

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: | May 15, 2019 |
| <input type="checkbox"/> Non-Mandatory Site Visit | May 29, 2019 |
| <input type="checkbox"/> Questions Due | June 3, 2019 |
| <input type="checkbox"/> Proposals due | June 11, 2019 |
| <input type="checkbox"/> Complete Selection Process | June 13, 2019 |
| <input type="checkbox"/> Council Approval of Contract | July 16, 2019 |
| <input type="checkbox"/> Award of Contract | July 17, 2019 |
| <input type="checkbox"/> Sign and Process Contract | July 24, 2019 |
| <input type="checkbox"/> Notice to proceed | August 1, 2019 |

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

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 |

Figures / Exhibits:

- Figure 1: Site Plan & Removal Trees (includes points for each tree to be removed, exclusion areas, site structures/features to be protected and site water/riparian features), attached.
- Figure 2: Site Slopes, attached.
- Figure 3: Tree Marking Method
- Exhibit 1: Management Requirements, attached.
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- Exhibit 3: Cost Proposal Form
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- Exhibit 5: Tree Database, attached.
- Exhibit 6: Tree Geodatabase: By request (via email to Project Manager at LMcNulty@cityofberkeley.info)

ATTACHMENT A

CHECKLIST

- Contractor Identification and Company Information
- Qualifications and References
- Price Estimate (Exhibit 3)
- 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 (or statement of no) 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(S) AFTER COUNCIL APPROVAL TO AWARD CONTRACT.

- Provide **original-signed in blue ink** 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 Professional 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 Construction Management / 18-11238**

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 Sean Rose, Manager of Engineering, Department of Public Works, 1947 Center street, 4th Floor, Berkeley, CA. 94704
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 Tree Hazard Mitigation / 18-11238-C**

Attachment D

PERSONAL SERVICES CONTRACT

THIS CONTRACT is between the CITY OF BERKELEY (“City”), a Charter City organized and existing under the laws of the State of California, and [REDACTED] (“Contractor”), a [REDACTED] doing business at [REDACTED], who agree as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract.

2. **PAYMENT**

For services referred to in Section 1, City will pay Contractor a total amount not to exceed \$ [REDACTED]. City shall make payments to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. **TERM**

a. This Contract shall begin on [REDACTED], 20 [REDACTED] and end on [REDACTED], 20 [REDACTED]. The City Manager of the City may extend the term of this contract by giving written notice.

b. Either party may terminate this Contract for default upon five (5) days’ written notice to the other if the other party has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract at its convenience and without cause upon thirty (30) days written notice to Contractor. Except as provided in this Contract, in no event shall City be liable for costs incurred by or on behalf of Contractor after the effective date of a notice of termination.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

For purposes of this Contract, all notices to Contractor shall be addressed as follows:

[Contractor Contact Name]
[Contractor Business Name]
[Contractor Street Address]
[Contractor City, State Zip]

Attachment E p. 1

- d. If City terminates this Contract for convenience before Contractor completes the services in Exhibit A, Contractor 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.

4. **INDEMNIFICATION**

Contractor, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with Contractor's operations under this Contract, or with the performance of this Contract by Contractor or its officers, employees, partners, directors, subcontractors or agents.

5. **INSURANCE**

- a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two-million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one-million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$ to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. **The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below and include the CMS#.**

- b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

- c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

Attachment E p. 2

d. Contractor shall forward all insurance documents to:

Department Name: [REDACTED]

CMS# [REDACTED]

Department Address: [REDACTED]

6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor 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, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor 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 Contractor's subcontractor, if any; 3) name and address of Contractor's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

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

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

7. **MATERIAL SAFETY DATA SHEETS**

a. To comply with the City's Hazard Communication Program, Contractor agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Contractor 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 Contractor may use that product.

b. City will inform Contractor 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.

8. **OWNERSHIP OF DOCUMENTS**

a. When this Contract is terminated, Contractor 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 Contract. All materials shall be returned in the same condition as received.

b. Contractor grants City a royalty-free, exclusive and irrevocable license to reproduce, publish, use and to authorize others to do so, all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this Contract. Contractor shall not publish any such material without the prior written agreement of the City.

c. With the prior written approval of City's Project Manager, Contractor may retain and use copies of its work for reference and as documentation of its experience and capabilities.

9. **NON-DISCRIMINATION**

Contractor 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, Contractor agrees as follows:

a. Contractor 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.

b. Contractor 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, Contractor shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

10. **INDEPENDENT CONTRACTOR**

a. Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the services required of Contractor by the terms of this Contract. Contractor 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 Contractor.

b. Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Contractor's Work only and not as to the means or methods by which such a result is obtained.

c. Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

d. Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Contractor.

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11. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor, 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.

b. 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 Contractor, 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 Contractor.

c. 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.

12. **NUCLEAR FREE BERKELEY**

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

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

a. In accordance with Resolution No. 59,853-N.S., Contractor 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, and 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.

b. For purposes of this Contract, the Tibet Autonomous Region and the provinces of Amdo, Kham, and Ü-Tsang shall be deemed oppressive states.

c. Contractor's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

Attachment E p. 5

14. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Contractor is required by this Contract to prepare a written report or study, Contractor 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, Contractor shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

15. **BERKELEY LIVING WAGE ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Contractor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Contractor 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. Contractor expressly acknowledges that, even if Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Contractor to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor 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 Contractor for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 17.

c. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Contractor engages to execute its responsibilities under this Contract. All subcontractor 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.

d. If Contractor 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.

Contractor'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 3. In the event that City terminates Contractor due to a default under this provision, City may deem Contractor 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, Contractor 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 Contractor'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

Attachment E p. 6

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 or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

16. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Contractor 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.

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor 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.

c. If Contractor 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.

Contractor'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 3. In the event the City terminates this contract due to a default by Contractor under this provision, the City may deem Contractor 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, Contractor 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 Contractor'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 Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **AUDIT**

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 City 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.

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18. **SETOFF AGAINST DEBTS**

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

19. **CONFIDENTIALITY OF INFORMATION**

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

20. **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, Contractor 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. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

21. **GOVERNING LAW**

This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract 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 Contract shall be in Alameda County, California.

22. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Contractor.

23. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Contractor. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

Attachment E p. 8

b. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

24. **SEVERABILITY**

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

25. **WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or a waiver of any other default of Contractor.

26. **ASSIGNMENT**

Contractor may not assign this Contract without the prior written consent of the City, except that Contractor may assign its right to any money due or to become due hereunder.

27. **EFFECT ON SUCCESSORS AND ASSIGNS**

This Contract shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

28. **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 Contractor's service.

29. **SECTION HEADINGS**

The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract.

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

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

Attachment E p. 9

Business License Number [REDACTED]
B.M.C. § [REDACTED]
Taxpayer ID Number [REDACTED]

31. **PERFORMANCE BOND**

A performance bond in the sum of \$____ (Contract Price) is to be executed by the Contractor and surety, as described in Exhibit C.

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

In performing this Agreement, Contractor agrees to comply with all applicable terms governing FEMA Public Assistance Grants as set forth in Exhibit D.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date first mentioned above.

CITY OF BERKELEY

By: _____
CITY MANAGER

Registered by:

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

CITY AUDITOR

Attest:

CITY CLERK

CONTRACTOR

Contractor Name (print or type) Signature

Print Name

Tax Identification #

Berkeley Business License #

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

Attachment E p. 11

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT

EXHIBIT C

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, **City of Berkeley** (“City”), a public agency of the State of California, has awarded to _____ as Principal, Specification Number **[xx-xxx-xx]**, dated the _____ day of _____, 20__ (the “Contract”), titled Example Project in the amount of \$_____, which Contract is by this reference made a part hereof, for the work of the following Contract:

(Describe Contract Work)

1.02 AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

1.03 NOW, THEREFORE, we, the undersigned Principal and (Name of Surety) _____ as Surety are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE to be paid to City or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by City, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by City, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal’s part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless City as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

1.05 No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, or work or actions by City to mitigate the damages resulting from any breach in performance by Contractor, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

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- 1.06** Whenever Principal shall be and declared by City in default under the Contract, Surety shall promptly remedy the default, or shall promptly, and in no event later than thirty (30) calendar days from notice:
- A. Undertake through its agents or independent contractors (but having qualifications and experience reasonably acceptable to City, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
 - B. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by City of the lowest responsible bidder, arrange for a contract between such bidder and City and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by City to the Principal under the Contract and any amendments thereto, less the amount paid by City to Principal.
- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing City's rights against the others.
- 1.08** Surety may not use Contractor to complete the Contract absent City's Consent. City shall have the right in its sole discretion to continue the work of the Contract, as necessary following a default and/or termination, as necessary to prevent risks of personal injury, property damage or delay to the Project.
- 1.09** No right of action shall accrue on this bond to or for the use of any person or corporation other than City or its successors or assigns.
- 1.10** Surety shall join in any proceedings brought under the Contract upon City's demand, and shall be bound by any judgment.
- 1.11** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20_____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Corp. Seal)

Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

Address: _____

Address: _____

END OF DOCUMENT

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.