

Finance Department
General Services Division

**REQUEST FOR QUALIFICATIONS (RFQ)
Specification No. 19-11286-C
FOR
VISION AND IMPLEMENTATION PLAN FOR BERKELEY'S VETERANS MEMORIAL
BUILDING, THE MAUELLE SHIREK BUILDING ("OLD CITY HALL"), AND MARTIN
LUTHER KING JR. CIVIC CENTER PARK**

PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms, teams or individuals **to create a vision and implementation plan for Berkeley's Civic Center, including the Veterans Memorial Building, the Maudelle Shirek Building ("Old City Hall"), and Martin Luther King Jr. Civic Center Park.** As a Request for Qualifications (RFQ) this is not an invitation to bid.

The project scope, content of Statement of Qualifications (SOQ), project approach, and vendor selection process are summarized in the RFQ (attached). Responses must be received no later than 2:00 pm, **on, April 16, 2019.** All responses must be in a sealed envelope and have "**Civic Center Vision and Implementation Plan**" and **Specification No. 19-11286-C** clearly marked on the **outer most mailing envelope.** Please submit one (1) unbound original and *five (5)* bound copies of the responses as follows:

Mail or Hand Deliver To:
City of Berkeley
Finance Department/General Services Division
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

In addition to Mail or Hand Delivered responses, proposals can be delivered electronically to ecodev@cityofberkeley.info, in accordance with the timeline stated above.

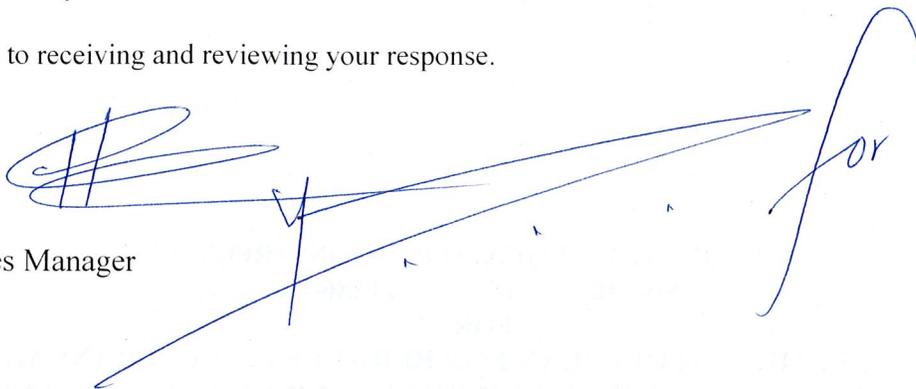
Responses will not be accepted after the date and time stated above. Incomplete responses that do not conform to the requirements specified herein will not be considered. Issuance of the RFQ does not obligate the City to negotiate or award a contract, nor is the City liable for any costs incurred by 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 RFQ and understands all the requirements and conditions.

For questions concerning the anticipated work, or scope of the project, please **contact Eleanor Hollander, Economic Development Project Coordinator,** via email at ehollander@cityofberkeley.info no later than **March 25, 2019.** 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.

We look forward to receiving and reviewing your response.

Sincerely,

Shari Hamilton
General Services Manager



I. BACKGROUND

The City of Berkeley (the “City”) is soliciting submissions from qualified firms, teams, or individuals to provide professional consultant services necessary to conduct a transparent public process and develop a community vision, design concepts and implementation plan for Berkeley’s Civic Center area, including Martin Luther King Jr. Civic Center Park, Veterans Memorial Building, and Maudelle Shirek Building (commonly referred to as “Old City Hall”).

Goal of the Civic Center Vision & Implementation Plan

The goal of this project is to conduct an inclusive and transparent community process, identify and engage meaningfully with all stakeholders, and provide an actionable vision and achievable plan for the Civic Center area. The project team shall produce a plan for infrastructure and amenities that support current and future community needs, while respecting and celebrating the area’s rich past and historically significant structures. The project team will aim to build civic trust, establish shared and realistic expectations of the programmatic capacities of the two (2) buildings and park, and deliver preliminary design concepts of the space for review by City Council.

Study Area and Context

The City of Berkeley, a densely populated community with approximately 120,000 residents, boasts an inspired Civic Center that sits near the heart of its walkable, transit-oriented downtown. Although the Civic Center presently serves a number of important functions for the City, in recent years City officials and community members have suggested that the space is underutilized. Community members have given voice to a variety of ideas and perspectives regarding the adaptive reuse of the buildings and open space that comprise the Civic Center including expanded recreation activities, art and cultural uses, human services, commerce, housing, and other ideas.

Originally conceived at the turn of the 20th Century, the Civic Center layout was master planned and molded by City Beautiful Movement principles, and anchored by the 1909 construction of the Maudelle Shirek Building at what is now 2134 Martin Luther King Jr Way (formerly Grove Street). The plan transformed the City’s center into an aesthetically appealing group of civic buildings surrounding a central park by the 1940s. Today the Civic Center comprises portions of the area surrounding Martin Luther King Jr. Civic Center Park. The Maudelle Shirek Building (1909) and the Veterans Memorial Building (1928) which flank the Park on the west and north sides. The larger Berkeley Civic Center District (codified by the Civic Center Overlay Zone, 2014) itself was listed on the National Register of Historic Places in 1998 and in addition, many of the buildings in the Civic Center District including the Maudelle Shirek Building, the Veterans Memorial Building, and the Park itself have been individually recognized as City Landmarks.

Since the 1940s seismic building codes have evolved, requiring different thresholds of required maintenance and upkeep depending on use. The historic structures, the Veterans Building and Old City Hall, show signs of deferred maintenance need. The fountain in the Park ceased to run water in the 1970s and was fully boarded up in the late 1990s. The Veterans Building was outfitted with a ramp on the front entrance to comply with Americans with Disabilities Act (ADA) requirements at the time (circa 1995).

Measure T1 Bond Funding for Infrastructure and Facilities

In 2016, Berkeley voters passed Measure T1, which authorized the City to sell \$100 million of general obligation bonds to repair, renovate, replace, or reconstruct the City’s aging infrastructure and facilities, including important City facilities and buildings. After six (6) months of community input, Citywide

participation, and public comment, in June of 2017 the City Council approved a list of T1 Phase 1 projects [See [map](#)].

Presently, as part of the City's Measure T1 Bond Funding program, the Veterans Memorial Building and Old City Hall are slated for "Structural analysis and visioning of possible conceptual design alternatives, in concert with Civic Center Park, to help determine a direction for future capital improvements to restore and secure these facilities to maximize their community benefit" of which this RFQ is designed to encompass. The T1 Management Team, comprised of Parks, Recreation & Waterfront and Public Works supervisors, manages the bond program. [See: [Measure T1 Policies and Procedures Manual](#) (January 2019).] The planning and community input process for Phase Two of the T1 Program is anticipated to start in June 2019, approximately two years before City Council approves Phase Two projects. As part of this process, staff will explore grants and other sources of funding to potentially continue projects planned and designed in Phase 1, or supplement potential Phase Two projects with additional scope. The results of this project are intended to inform portions of the Phase Two T1 Program.

Seismic Safety Analysis

The seismic safety of both Old City Hall and the Veterans Memorial building was estimated in 2002, including high level cost estimates for retrofitting the structures. These 2002 figures are currently being updated to meet the current seismic code under the direction of the City's Public Works Department. The seismic performance levels follow ASCE 41-17¹, which includes collapse prevention for a large earthquakes and life safety for a smaller earthquakes. The forthcoming cost estimates and engineering solutions for addressing seismic safety in Old City Hall and the Veterans Building is anticipated to be complete by April 2019. The updated study however will *not* explicitly identify baseline cost evaluations of other supporting infrastructures based on occupant loads and/or programmatic uses including (but not limited to) fire suppression systems, heating, ventilation, and air conditioning (HVAC) systems, electrical loads, potable water, and sewer capacity.

Overview of the Civic Center Area

Martin Luther King Jr. Civic Center Park

The 2.7 acre (120,700 sqft) area now comprising the Berkeley's Martin Luther King Jr. Civic Center Park ("Civic Center Park" or "the Park") was acquired and conveyed to the City of Berkeley in 1940, and the labor to construct it was furnished by the federal Works Projects Administration (WPA). The electrically illuminated fountain set in a flagstone terrace was a gift to the City of Berkeley from the City of San Francisco after the Golden Gate Exposition (the 1939 World's Fair). The Park was dedicated as Martin Luther King Jr. Civic Center Park in 1983 and was designated as a city landmark in 1997. The Park features a large lawn for sitting and picnicking along with a 'Peace Wall' inlaid with tiles made by hundreds of community members, and the same historic fountain (though it is currently non-functional, de-electrified, and covered with plywood).

The Park was the subject of a conceptual planning process to redesign it in 1994, and the subsequent landscaping and tot lot improvements were underwritten by Measure S bond funding in 1996. In 2005, the Civic Arts Committee commissioned artist Scott Parson of Sioux Falls, South Dakota to create a monument to the Native American community including four bronze turtles, representing the four sacred

¹ American Society of Civil Engineers (ASCE), [Seismic Evaluation and Retrofit of Existing Buildings](#) (41-17). Standard ASCE 41-17 describes deficiency-based and systematic procedures that use performance-based principles to evaluate and retrofit existing buildings to withstand the effects of earthquakes.

directions, to be placed in the fountain once the mechanical renovations were completed. Unfortunately, the renovations proved cost prohibitive and were not completed. The turtles are currently displayed in the lobby and fifth floor of the Martin Luther King Jr Civic Center building at 2180 Milvia Street.

Veterans Memorial Building

The remarkable three story building at 1931 Center Street was built in 1928. In the early 1920s Alameda County voters approved a special tax to construct buildings that would honor war veterans and provide a meeting place for their organizations. Berkeley's Veteran's building was built in Classic Moderne style by the Alameda County architect Henry Meyers. It features a full basement, kitchen facilities, a theater with approximately 270 seats, and four smaller offices or "halls". The Veterans Memorial Building was designated as a city landmark in 1985.

Maudelle Shirek Building or "Old City Hall"

Built in 1907 and listed on the National Register of Historic Places (1998), Old City Hall is an example of Beaux-Arts Classicism with a distinctive cupola and spire. It was designed by John Bakewell and Arthur Brown, Jr. who went on to design San Francisco's City Hall (1916) and Opera House (1932). In 1972 the American painter Romare Bearden was commissioned to do a large mural for the City Council Chamber in Old City Hall; the resulting artwork [*Berkeley - The City and Its People*](#) includes an image that was the inspiration for the City's current logo. The building was officially renamed the "Maudelle Shirek Building" in 2005 to honor the long standing Berkeley City Councilmember. The building served as the home of Berkeley city government from 1909 to 1977, the Berkeley Unified School District's main administration building from 1979 to 2012, and housed Berkeley's City Council meetings until late 2018. The City's administrative offices are now located on the east and west sides of the Park, in the Martin Luther King Jr Civic Center Building (Federal Land Bank Building) at 2180 Milvia Street and 1947 Center Street (Pacific Insurance Building). The Old City Hall building was designated as a city landmark in 1975.

Current Civic Center Programs and Special Events

The buildings and the Park are currently utilized for a variety of civic activities and human services. Although none of the uses described below are prescribed for continuance in these spaces, they provide insight regarding the community's needs and could inform future uses of the spaces.

Maudelle Shirek Building - The City of Berkeley currently oversees a winter storm shelter located temporarily in Old City Hall that provides refuge for 25-35 homeless individuals per night. The Winter Shelter operates for up to 45 nights per season (November to April) when it is raining or under 40 degrees in Berkeley at night. Prior to use as a shelter, the Berkeley City Council, Rent Board, and Zoning Adjustments Board held (near weekly) meetings in the Old City Hall. In November of 2018 the Berkeley City Council finalized an agreement to use the Berkeley Unified School District (BUSD) meeting space at the district headquarters 1231 Addison Street. Prior to that, the School Board and City Council both met at Old City Hall, with the district paying the City \$1 per year plus covering maintenance and upkeep. In 2012, BUSD renovated its central district office, installed a new dais and vacated Old City Hall.

Veterans Building - The City's Department of Health, Housing, and Community Services (HHCS) manages four license agreements with non-profit service organizations located in the Veterans Building (1931 Center Street), and the Public Works' Division of Real Property manages a separate lease with the Berkeley Historical Society for the Western Hall on the lower floor at the Veterans Building which was

established in 1992. The terms of the leases managed by HHCS are month to month, and none of the license agreements have expiration dates. They are with the following organizations:

- Options Recovery Services
- Building Opportunities for Self-Sufficiency
- Dorothy Day House
- Berkeley Historical Society

Three other operations have active business licenses to operate at 1931 Center Street including the Disabled American Veterans, the American Legion Berkeley Post 7 (Fraternal Lodge), and the Deaf/Disability Project.

Martin Luther King Jr Civic Center Park - Various special events of civic import take place at the Park, including planned, permitted events as well as events that are impromptu, unplanned and unpermitted.

Examples include:

- A weekly Farmer’s Market managed by Berkeley’s Ecology Center stages every Sunday on Center Street adjacent to the Park, with several hundred weekly attendees.
- June 2016 – City Staff Strategic Planning Event and Training (approximately 1,000 participants).
- Other special events and festivals (e.g., running races and marathons, old time music festival, book festival).
- November 2016 – Unity and Peace Sign Rally (300 attendees).
- July 2018/June 2015 – Library Gardens Remembrance Ceremony/Tree Planting with Ireland’s President Higgins.
- August 2013 – Berkeley Tuolumne Family Camp vigil (approximately 1,000 attendees).
- 2017/18 – Unpermitted “free speech” rallies and confrontations (ranging from several hundred to several thousand attendees).

Previously adopted documents related to Civic Center Vision and Implementation Plan Development
In 2014, a Civic Center zoning overlay was adopted by the Berkeley City Council. Since the 1990s the Civic Center Historic District had a designation under the National Register of Historic Places, but had no corresponding counterpart in the Berkeley municipal zoning ordinance. Between 2013 and 2014, a process was undertaken to create an overlay district that would encompass the existing landmarked Civic Center Historic District. City Council referred to the Planning Commission a proposal to focus the permissible uses to a range compatible with the broad definition of ‘civic use’ and to align the existing boundaries of the Historic District to match the new zoning overlay district. Adopted by the City Council in October of 2014, the Civic Center Overlay Zone is intended to provide a path forward for capital projects and creative reuse to occur in the zone. Its stated purpose is to “maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities” and “Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.”² In addition, the Park was the subject of a 1997 planning process that established its landmark status.

Additional Context Considerations

The implementation plan should articulate a vision for the Civic Center Park, the Veterans Memorial Building, and the Old City Hall. Adjacent buildings to the north and west, including the current City administration buildings (2180 Milvia Street and 1947 Center Street) and area to the south of Civic Center Park (the Berkeley Community Theater and Berkeley High School), are not strictly part of the study area,

² See Civic Center District Overlay: BMC Chapter 23E.98. Online:
<https://www.codepublishing.com/CA/Berkeley/html/Berkeley23E/Berkeley23E98/Berkeley23E98.html>

although park-adjacent structures and the surrounding uses in the Civic Center Overlay Zone should be considered throughout the course of the planning process.

Correspondingly, other traffic (all transport modes) and pedestrian circulation considerations and how the buildings and park relate to one another should also be addressed. The streets bounding the Civic Center Park (MLK Jr Way, Center Street and the Allston Way permeable paver pilot program) offer opportunities for creative design solutions.³

The City of Berkeley Landmarks Preservation Commission must be engaged in order to review any planned construction, alteration, or demolition of structures on these properties. Other City Commissions, such as the Transportation, Civic Arts, Public Works, and Parks Recreation & Waterfront Commissions, should also be consulted regarding visioning, proposal feasibility and technical guidance. Ultimately, staff will seek approval of design concepts by the Berkeley City Council.

II. SCOPE OF SERVICES

Tasks

The consultant(s) will be part of a larger project team that includes City staff in multiple departments. The consultant(s) will lead and complete tasks that may include but are not necessarily limited to the following:

- *Research and document review.* Collect and review critical documents related to the project, e.g., landmark designations and other planning and legal documents. Research examples of best practices for urban civic centers and adaptive reuse of historic buildings (both design and programmatic) from a range of municipalities that could inform our local community.
- *Engage with City staff and the project team* via phone, e-mail and project team coordination meetings.
- *Develop and implement a community outreach and engagement strategy.* Lead a comprehensive, transparent public process that yields digestible conclusions. Stakeholder information gathering, program communication, distillation of relevant points are the core tasks of the community outreach and visioning portion of this project. Community outreach and engagement shall utilize effective communication mediums to disseminate information and ideas should be accessible by all, and barriers to achieving equitable outreach and engagement should be addressed.
- *Engage with City Commissions*, including the Landmarks Preservation Commission, the Parks and Waterfront Commission, and the Public Works Commission.
- *Assess the existing supporting infrastructures of all three elements (Old City Hall, Veterans Memorial Building and Civic Center Park)* to better understand their existing conditions and limitations. Use this work as a baseline to anticipate and evaluate upgrade costs to meet programmatic reuse ideas generated by stakeholders.
- *Identify, articulate and optimize financial tools and ongoing resources* needed to maintain the facilities and/or revenue generation strategies to sustain the ongoing upkeep and maintenance of the facilities.
- *Plan and facilitate at least three public engagement meetings.* Anticipated meeting topics are: (1) an initial outreach/project kick off meeting to introduce the project and gather preliminary feedback, (2) presentation of initial concepts based on inputs from meeting one, and (3) a preferred concept(s) selection workshop.

³ See the following documents for guidance: [Downtown Area Plan](#) (2012), [Streets and Open Space Improvement Plan \(SOSIP\) 2013](#), and [SOSIP Nexus Study and Impact Fee](#), 2011.

- *Develop up to three conceptual design concepts* for the adaptive reuse of both buildings and the Park. Proposed concepts and drawings shall articulate the use program all three elements, in relationship to one another and to the larger Civic Center. Given the context of the discussion between buildings and open space can be vastly different, the open space and the building reuse can proceed on separate “tracks” though such an approach must be clearly articulated by the project team from the start of the work. Develop cost estimates and feasibility analyses for each concept, including capital improvement costs and costs for ongoing maintenance and operations.
- *Draft documents and revisions.* Provide one set of draft documents for review by the project team and make (anticipated) two rounds of revisions, culminating in the production of a (one) final report of findings and analysis that outlines a feasible plan for the implementation of the vision for the Civic Center Park, Old City Hall, and the Veterans Memorial Building.
- *Presentation of findings.* Present findings to the project team, City Council, or other relevant officials. The anticipated outcome of the project is that a finalized vision and implementation plan would identify a preferred design concept and be adopted by Berkeley’s City Council.

Please note that the City may choose to engage multiple vendors to complete various components of the project.

Term

The contract work is anticipated to begin by July 1, 2019, and should be completed by August 30, 2020.

Funding Availability

Funding in the amount of \$296,430 has been made available for this project.

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.

A. Consultant 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. For any sub-consultants on the proposal team, please include similar.

B. Firm Experience:

Provide a listing of projects completed by the project team within the past five (5) years involving work with municipalities, public sector, historic, civic center, or public realm related projects. For each listing please include a brief description of each project, the location, and the project start and completion date.

C. Individual Staff Experience:

Provide a listing of each key staff person in the firm who will be assigned to the project and background information demonstrating their capabilities and qualifications to perform the assigned task. For each individual, provide current professional registrations, related experience, educational background, and years of experience with the team.

D. Client References:

Provide a minimum of *three (3)* client references. References should be cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

E. 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 SOQ/Written 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.

F. Budget:

Provide a complete budget for the project. Articulate by tasks, timeline and estimated hours. Indicate which staff members/roles are assigned to which tasks and provide associated billing rates.

G. Project Organization:

Provide a chart showing the names and assignments of all key personnel including an estimate of each individual's time commitment to the project. The chart should include proposed lines of communication with City staff. Any proposed sub-consultants should be clearly identified on the chart.

H. Project Understanding and Approach:

Describe how you will approach this project as described in sections I and II above. Explain the specific tasks you will implement, the research you will undertake, outreach you plan to conduct and the deliverables you will provide to the City of Berkeley. List any challenges that you anticipate, and explain how you will overcome those challenges. Include a timeline/project plan

assuming a July 1, 2019 start date and an August 30, 2020 end date. Highlight milestones, resource requirements, and necessary inputs not addressed herein.

Respondents can propose to complete only a portion of the scope outlined in section II. If this is the case, please be clear about that fact and provide detail about how your approach will facilitate integration of your work products with the rest of the project.

IV. CONSULTANT SELECTION PROCESS

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

1. Qualifications and References including Relevant Experience of Project Team/Personnel (35%)
2. Project Understanding and Approach (50%)
3. Overall quality of the response including, completeness, clarity, organization, responsiveness (5%)
4. Provide a complete budget for the project (10%)

A selection panel will be convened to evaluate proposals and select a consultant team.

After a review of the proposals from the short listed respondents, the City may ask the proposers to make an oral presentation to answer any questions the City may have and to clarify their proposal. The City will then rank the proposals and then request fee schedules from the selected proposers and will attempt to negotiate satisfactory contracts with them. If the City is unable to reach agreement with the selected respondents, the City will repeat the negotiation process with the next highest 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. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley
Accounts Payable
PO Box 700
Berkeley, CA 94701
Attn: Eleanor Hollander / OED

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

VI. CITY REQUIREMENTS

A. 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**

B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

D. 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.**

E. Berkeley Living Wage Ordinance:

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The Living Wage rate is currently \$14.97 (if medical benefits are provided) or \$17.45 (if medical benefits are not provided). The Living Wage rate is adjusted automatically effective June 30th of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

F. Berkeley Equal Benefits Ordinance:

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

G. 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.

C. Business License

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

VIII. SCHEDULE (dates are subject to change)

- | | |
|---|----------------|
| <input type="checkbox"/> Issue RFQ to potential bidders: | March 14, 2019 |
| <input type="checkbox"/> Questions Due | March 25, 2019 |
| <input type="checkbox"/> Proposals due from potential bidders | April 16, 2019 |
| <input type="checkbox"/> Interviews of prospective applicants (week of) | May 15, 2019 |
| <input type="checkbox"/> Complete Selection Process | May 20, 2019 |
| <input type="checkbox"/> Council Approval of Contract | June 25, 2019 |
| <input type="checkbox"/> Award of Contract | June 26, 2019 |
| <input type="checkbox"/> Notice to proceed | July 15, 2019 |

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

Attachments:

- | | |
|---|--------------|
| ● Check List of Required items for Submittal | Attachment A |
| ● Non-Discrimination/Workforce Composition Form | Attachment B |
| ● Nuclear Free Disclosure Form | Attachment C |
| ● Oppressive States Form | Attachment D |
| ● Living Wage Form | Attachment E |
| ● Equal Benefits Disclosure Form | Attachment F |
| ● Right to Audit Form | Attachment G |
| ● Insurance Endorsement | Attachment H |
| ● Equal Benefits Certification of Compliance | Attachment I |
| ● Professional Consulting Agreement | Attachment J |

ATTACHMENT A

CHECKLIST

- Proposal describing service (one (1) unbound original and five (5) copies)
- Contractor Identification and Company Information
- Client References
- The following forms, completed and **signed in blue ink** (attached):
 - Non-Discrimination/Workforce Composition Form Attachment B
 - Nuclear Free Disclosure Form Attachment C
 - Oppressive States Form Attachment D
 - Living Wage Form (*may be optional*) Attachment E
 - Equal Benefits Disclosure Form (*may be optional*) Attachment F

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 G
- Commercial General & Automobile Liability Endorsement Form Attachment H
- Equal Benefits Ordinance Certification of Compliance (EBO-1) Attachment I
- 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.

Attachment B (page 2)

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Civic Center Vision and Implementation Plan / 19-11286-C**

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of _____ (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "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 the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham and U-Tsang**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No.: **Civic Center Vision and Implementation Plan / 19-11286-C**

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Attachment D

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

- a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?
YES ____ **NO** ____

If **no**, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If **yes**, please continue to question **1(b)**.

- b. Do you have six (6) or more employees, including part-time and stipend workers?
YES ____ **NO** ____

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. **Please continue to Section II.**

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

- a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?
YES ____ **NO** ____

If **no**, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If **yes**, please continue to question **2(b)**.

- b. Do you have six (6) or more employees, including part-time and stipend workers?
YES ____ **NO** ____

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. **Please continue to Section II.**

Section II

Please read, complete, and sign the following:

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Civic Center / 19-11286-C**

Section III

-
- **** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ****

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

Attachment E (page 2)

CITY OF BERKELEY
Equal Benefits Ordinance Disclosure Form

As a condition of being awarded a contract with the City of Berkeley, the selected Contractor/Vendor (“Contractor”) may be required, during the performance of the contract, to comply with the City’s non-discrimination provisions of the Equal Benefits Ordinance (“EBO”) as set forth in Berkeley Municipal Code, Chapter 13.29. The EBO requires that during the performance of a contract, the Contractor shall provide equal benefits to its employees with spouses and employees with domestic partners. Benefits include, but are not limited to, health benefits, bereavement leave, family medical leaves, membership and membership discounts, moving expenses, retirement benefits, and travel benefits. A cash equivalent payment is permitted if an employer has taken all reasonable efforts to provide domestic partner’s with access to benefits but is unable to do so. A situation in which a cash equivalent payment might be used is if the employer has difficulty finding an insurance provider that is willing to provide domestic partner benefits

The EBO is applicable to the following employers:

- For-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements, and other construction projects in the amount of \$25,000 or more
- Non-profit employers that have a contract with the City for the purchase of goods, services, public works or improvements, and other construction projects in the amount of \$100,000 or more
- Lessees of public property, licensees, concessionaires, and franchises that generate \$350,000 or more in annual gross receipts
- Entities which receive a grant agreement of \$100,000 or more

Contractors who are subject to the EBO must certify to the City before execution of the contract by completing form EBO-1 that they are in compliance with the EBO or have been issued a waiver by the City. Contractors must also allow authorized City representatives access to records so the City can verify compliance with the Ordinance.

The EBO includes provisions that address difficulties associated with implementing procedures to comply with the EBO. Contractors can delay implementation of procedures to comply with the EBO in the following situations:

- (1) until the first effective date after the first open enrollment process following the contract execution date, not to exceed two years if the Contractor submits evidence of engaging in reasonable efforts to comply with the EBO;
- (2) until administrative steps can be taken to incorporate nondiscrimination in benefits in the contractor’s infrastructure, not to exceed three months, unless extended at the discretion of the City Manager; and
- (3) until the expiration of a Contractor’s current collective bargaining agreement(s)

Compliance with the EBO

If a Contractor has not received a waiver from complying with the EBO and the timeframe within which it can delay implementation has expired but it has failed to comply with the EBO, the Contractor may be deemed to be in material breach of the City agreement. In the event of a material breach, the City may cancel, terminate or suspend the City agreement, in whole or in part. The City also may deem the Contractor an irresponsible bidder and disqualify the Contractor from contracting with the City for a period of five years. In addition, the City may assess liquidated damages against the Contractor which may be deducted from money otherwise due the Contractor, and pursue any other remedies available at law or in equity.

By my signature below, I acknowledge that the Contractor understands that to the extent it is subject to the provisions of B.M.C. Chapter 13.29, the Contractor shall comply with this provision.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity:

Specification No.: **Civic Center Vision and Implementation Plan / 19-11286-C**

Attachment F

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: **Civic Center Vision and Implementation Plan / 19-11286-C**

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

Attachment G

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: **Civic Center/ 19-11286-C**

Attachment H

To be completed by
Contractor/Vendor

**Form EBO-1
CITY OF BERKELEY**



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name:		Vendor No.:	
Address:	City:	State:	ZIP:
Contact Person:		Telephone:	
E-mail Address:		Fax No.:	

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
 Yes No (If "Yes," proceed to Section 5; if "No", continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
If "Yes," continue to Question C.
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?
Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?
Yes No
If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E.
If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee?
Yes No
If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
 - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).

B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? *
Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this _____ day of _____, in the year _____, at _____,
(City) (State)

Name (please print)

Signature

Title

Federal ID or Social Security Number

<u>FOR CITY OF BERKELEY USE ONLY</u>				
<input type="checkbox"/> Non-Compliant (The City may not do business with this contractor/vendor)				
<input type="checkbox"/> One-Person Contractor/Vendor	<input type="checkbox"/> Full Compliance	<input type="checkbox"/> Full Compliance		
<input type="checkbox"/> Provisional	Compliance	Category,	Full	Compliance by Date:
_____ Staff Name (Sign and Print): _____ Date: _____				
_____ _____				

Attachment I

Attachment J

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. QUALIFIED PERSONNEL; NO SUBCONSULTING

- 5.1 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.
- 5.2 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."
- 5.3 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.

6. REPRESENTATIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.

7. INDEMNIFICATION BY CONSULTANT

- 7.1 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.

8. LIABILITY OF CITY

8.1 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.

9. INDEPENDENT CONTRACTOR; PAYMENT OF TAXES AND OTHER EXPENSES

9.1 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.

9.2 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.

9.3 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.

9.4 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.

10. INSURANCE

10.1 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:

10.1.1 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.

10.1.2 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.

10.1.3 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.

- 10.1.4 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.
- 10.2 Insurance policies shall contain an endorsement containing the following terms:
 - 10.2.1 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.
 - 10.2.2 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.
 - 10.2.3 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.
 - 10.2.4 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 Consultant shall forward all insurance documents to, _____, Office of Capital Projects, 1947 Center Street, First Floor, Berkeley, CA 94704.

11. 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.

12. TERMINATION OF AGREEMENT FOR CAUSE

- 12.1 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.
- 12.2 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.)
- 12.3 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.

13. TERMINATION OF AGREEMENT FOR CONVENIENCE

- 13.1 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.
- 13.2 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.
- 13.3 Termination under this provision shall not be construed as a waiver of any right or remedy otherwise available to City.

14. 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.

15. 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:

16. OWNERSHIP OF RESULTS/WORKS FOR HIRE

- 16.1 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.
- 16.2 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.
- 16.3 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.

17. AUDIT AND INSPECTION OF RECORDS

- 17.1 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.
- 17.2 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.

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

18. DISPUTES

- 18.1 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.

- 18.2 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.

19. AGREEMENT MADE IN CALIFORNIA/VENUE

- 19.1 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.

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

20. CONFORMITY WITH LAW AND SAFETY

- 20.1 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.

- 20.2 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.

- 20.3 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.

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

21. MATERIAL SAFETY DATA SHEETS

- 21.1 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.

- 21.2 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.

22. 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:

- 22.1 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.
- 22.2 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.

23. CONFLICT OF INTEREST PROHIBITED

- 23.1 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.
- 23.2 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.
- 23.3 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.

24. 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.

25. OPPRESSIVE STATES CONTRACTING PROHIBITION

- 25.1 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.

25.2 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 Abo, Kham, and Ü-Tsang.

25.3 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.

26. 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.

27. BERKELEY LIVING WAGE ORDINANCE

27.1. 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.

27.2. 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.

27.3. 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.

27.4. 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.

27.5. 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.

28. BERKELEY EQUAL BENEFITS ORDINANCE

28.1. 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.

28.2. 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.

28.3. 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.

28.4. 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.

29. 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.

30. 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.

31. 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.

32. 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.**

33. MISCELLANEOUS

33.1 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.

33.2 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.

33.3 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.

33.4 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.

34. SEVERABILITY

34.1 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 _____