



# CITY OF BERKELEY

## DEPARTMENT OF PARKS, RECREATION & WATERFRONT (PRW)

### INVITATION FOR BID

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FOR

**West Side Aquatic Park: site modification, irrigation installation and tree  
planting**

**SPECIFICATION NO. 23-11587-C**

**May 2023**

**MANDATORY PRE-BID CONFERENCE: Tuesday April 25, 2023 at 9:30 am**

**BID OPENING DATE: Thursday May 11, 2023 at 2:00 pm**

Approved By:

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**Scott Ferris**  
Director of Parks, Recreation & Waterfront

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**2180 Milvia St., 3rd FLOOR, BERKELEY, CALIFORNIA 94704**  
**(510) 981-6700**

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**NOTICE TO BIDDERS**

1. Sealed bids will be received by the Purchasing Division of the Finance Department in their office located at **2180 Milvia Street, 3<sup>rd</sup> floor**, Berkeley, California up to the hour of:

**2:00 P.M., Thursday May 11, 2023**

2. At which time bids will be publicly opened and read by the Purchasing Agent for **Parks, Recreation & Waterfront (PRW) West Side Aquatic Park: Site Modification, Irrigation Installation and Tree Planting, Specification No. 23-11587-C**. Proposals must be submitted on forms prepared for this purpose furnished by the City in an envelope marked:

**West Side Aquatic Park: Site Modification, Irrigation Installation and Tree Planting  
Specification No. 23-11587-C**

3. Mandatory Pre-Bid Conference: Will be at 9:30 am on Tuesday April 25, 2023 at Aquatic Park South Lot, 2925 Bolivar Dr, Berkeley, CA 94710 (37.85175483799113, -122.29623930251034)
4. Scope of Work: The scope of services shall include, but is not limited to:
  - a. Design and installation of main line and irrigation system throughout Westside of Aquatic Park, site creation of continuous tree well along the ~1 mile of West Bolivar frontage road, and planting of 100 trees.

*See Appendix A for the full Scope of Work.*

5. California Contractor License Classifications required:  
Class B - General Building Contractor or  
Class A - General Engineering Contractor or  
C-27 Landscaping Contractor
6. Each proposal must be accompanied by an unconditional certified or cashier's check or bid bond made payable to the City of Berkeley, and such check or bond shall be in an amount equal to at least 10% of the total bid.
7. Each proposal must also include a signed copy of the Experience and Financial Qualifications Form, Taxpayer Identification Report, Nuclear Free Zone Disclosure Form, Oppressive State Compliance Statement Form, Sanctuary City Compliance Statement, and Equal Benefits Ordinance Disclosure Form.
8. In accordance with California State Labor Code, the wage scale is on file with the City of Berkeley Public Works Engineering Office, or is attached herewith.
9. Project specifications may be obtained online at the City of Berkeley's website under Current Construction Project Bid Opportunities: <https://berkeleyca.gov/Bid-Proposal-Opportunities>  
Bidders are responsible for notifying Ian Kesterson, Project Manager, by email at [ikesterson@cityofberkeley.info](mailto:ikesterson@cityofberkeley.info) to be included on the Plan holders list.
10. It is the Contractor's responsibility to check for any addenda on the City of Berkeley's website at <https://berkeleyca.gov/Bid-Proposal-Opportunities>

11. Prior to starting work, the Contractor must furnish the following:
  - a. Faithful Performance Bond in the sum of not less than 100% of the contract, executed on the City of Berkeley Standard Performance Bond Agreement Form.
  - b. Labor and Material Bond in the sum of not less than 100% of the amount of the contract.
  - c. A certificate of Worker's Compensation Insurance with a waiver of subrogation in favor of the City of Berkeley.
  - d. A certificate of insurance in an amount of not less than \$2 million per injury and \$2 million per occurrence and \$2 million combined liability limit with the City of Berkeley, its officers, agents, volunteers and employees, listed as additionally named insureds, (which must be confirmed by a formal Endorsement page).
  - e. Automobile liability insurance is \$2 million each occurrence Bodily Injury and \$2 million each occurrence Property Damage.
  - f. Commercial General and Automobile Liability Endorsement
  - g. 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.
  - h. Written notice of cancellation or of any limits reduction or change in said policy shall be mailed to the City and the Project Manager thirty (30) days in advance of the effective date thereof.
  - i. Contractor's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured.
12. Prior to award, the Contractor must meet with the City's Contract Compliance Officer to discuss the City's Non-Discrimination Ordinance 5876, which prohibits City Contractors from engaging in discrimination against employee or applicant for employment on any grounds specified in any State, Federal or Municipal law. The City's Non-Discrimination package and First Source Program are contained in the Non-Discrimination Component.
13. **All forms and insurance documents must have original signatures in blue ink.**
14. Please note the following:
  - a. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
  - b. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
  - c. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

15. Technical questions, general information, or plan holder's list: please contact Ian Kesterson, Project Manager at [ikesterson@cityofberkeley.info](mailto:ikesterson@cityofberkeley.info) Interpretations or clarifications considered necessary by the Project Manager in response to any questions will be issued by Addenda posted to the City's website. It is the Contractor's responsibility to check the City's website for Addenda prior to submitting their bid. Questions received less than seven (7) days prior to the date of bid may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

## **ATTENTION**

### **MANDATORY PRE-BID MEETING:**

**TUESDAY, APRIL 25<sup>th</sup>, 2023 @ 9:30 A.M.**

**LOCATION: AQUATIC PARK SOUTH LOT, 2926**

**BOLIVAR DR. HARRISON ST., BERKELEY CA, 94710**

**BIDS ARE DUE BY THURSDAY, MAY 11, 2023 BY 2:00PM.**

**THE AWARDED CONTRACTOR SHALL SUBMIT  
ALL CONTRACT DOCUMENTS BEFORE  
THURSDAY, MAY 25, 2023 BY 2:00PM.**

**THE CONTRACTOR SHALL BE PREPARED TO  
START WORK ON MONDAY, JUNE 5, 2023.**

**THE WORK SHALL REACH SUBSTANTIAL  
COMPLETION WITHIN 120 CALENDAR DAYS OF  
THE NOTICE TO PROCEED DATE; AND FINAL  
COMPLETION WITHIN 180 DAYS OF THE NOTICE  
TO PROCEED DATE.**

**LIQUIDATED DAMAGES OF \$500 PER DAY WILL  
BE ENFORCED FOR ANY DAYS BEYOND THE 120  
CALENDAR DAYS.**

## **BIDDERS AND CONTRACTORS CHECKLIST**

Items Required at Bid Opening: 2:00 P.M., Thursday May 11, 2023, at 2180 Milvia Street, Berkeley, 3rd Floor Purchasing Office.

- Bidder's Proposal (One full set of Originals and Two Additional Original Signature Pages signed in **blue ink**)
- Addenda (if any)
- Experience and Financial Qualifications
- Nuclear Free Zone Disclosure Form
- Oppressive States Resolution Disclosure Form
- Taxpayer Identification Report
- Bid Guarantee - 10% of Total Base Bid
- Equal Benefits Ordinance Disclosure Form
- Sanctuary City Compliance Statement

Items Required Before 2:00 p.m. Thursday, May 25, 2023 at 1326 Allston Way Berkeley CA 94702  
(For apparent low bid contractor only.)

- Copy of City of Berkeley Business License
- Performance Bond - 100% (executed on enclosed Performance Bond form)
- Labor and Material Bond- 100%
- Worker's Compensation Insurance - Statutory Amount
- Liability Insurance - \$2,000,000
- Commercial General and Automobile Liability Endorsement Form
- Memorandum of Understanding
- Workforce Composition
- Agreement for Change in Sub-Contractors
- Hardwood Disclosure Form
- Certificate of Compliance with Equal Benefits Ordinance
- Right to Audit

## **BIDDER'S PROPOSAL**

Bidders submitting proposals shall be very careful to follow all requirements in connection therewith. A checklist has been attached for guidance in complying with all phases of the bid process and project. Any proposal not complying with all these requirements may be rejected.

### **TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

Pursuant to the provisions of the specifications and contract documents, the undersigned proposed to perform the work as described therein in a manner satisfactory to the responsible City official. All materials, equipment, tools, labor and services necessary to the work will be furnished. All laws and ordinances relating to the work will be complied with, and a business license to do business in the City will be obtained. The undersigned declares that the specifications, contract documents and the site of the work have been thoroughly examined and that this proposal is made without collusion with any person, firm, or corporation.

Execution of the proposal by the undersigned bidder shall become a binding contract on the parties when the award of a contract pursuant to said proposal is authorized by resolution of the City Council, where required by the Charter of the City by the City Manager, or an officer who is his/her authorized representative.

The undersigned agrees that when his proposal is executed he will furnish specified bonds and insurance, and he will begin work within the time specified, and complete work within the contract period or agree to the assessment of liquidated damages, all as stipulated in the attached pages of the Bidder's Proposal.

As a guarantee that the terms of this proposal will be complied with, the undersigned submits herewith a proposal guarantee for an amount equal to Ten Percent (10%) of his total bid.

All subcontractors who will perform work for the bidder on this project in the amount in excess of one-half of one percent (0.5%) of the total bid, including labor, materials and equipment, or work specifically fabricated off the job site according to detailed drawings contained in the plans, shall be listed, pursuant to Sections 4100 to 4113, inclusive of the California Government Code.

**BIDDER'S PROPOSAL**

(Continued)

| <u>Name of Subcontractor and Address</u> | <u>Subcontractor<br/>License Number</u> | <u>Type of Work</u> |
|--|---|---------------------|
|  |   |                     |
|  |   |                     |
|  |   |                     |
|  |   |                     |

Contractor California License Number: \_\_\_\_\_

License Expiration Date: \_\_\_\_\_

I declare that the representations made in this bid are under penalty of perjury.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**BIDDER'S PROPOSAL**

**(Continued)**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the City of Berkeley ("City") in the form included in the Contract Documents, Document 00510 Agreement, to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents and the Notice to Bidders, including without limitation, those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) calendar days after the day of Bid Opening. Bidder will sign and submit the Agreement with Bonds and other documents required by Document 00100 Instructions to Bidders, within ten (7) business days after receipt of City's Notice of Intent to Award.
3. In submitting this Bid, Bidder represents:
  - (a) Bidder has examined all of the Contract Documents and of the following Addenda (receipt of all of which is hereby acknowledged).

| <u>Date</u> | <u>Number</u> |
|-------------|---------------|
|-------------|---------------|
  - (b) Bidder has visited the site and performed all tasks, research, investigation, reviews, examinations, analysis, and given notices, regarding the Project and the Site, as set forth in Document 00510 (Agreement), Article 5.
  - (c) Neighborhood notification and traffic / pedestrian control shall be considered as included in the total base bid, and no additional compensation will be allowed therefore.
4. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sum of money listed in the following Bid Schedule:

All bid items, including lump sums, unit prices, and additive alternates must be filled in completely. Quote in words and numerals. Scope of Work is listed in the Contract Documents. Contractor shall submit a proposal on all BASE BID ITEMS. Failure to do so may result in bid rejection.

**BIDDER'S PROPOSAL**

(Continued)

**BASE BID:**

All labor, materials, services and equipment necessary for the completion of all of the Work shown in the attached plans, specifications and other Contract Documents, except for that work called for in the Additive Bid Items (if any):

\_\_\_\_\_ Dollars \$ \_\_\_\_\_

5. Subcontractors and their sub-bids for work included in all bid items and additive or deductive alternates are listed on the attached Document 00430 Subcontractors List.
6. The undersigned understands that City reserves the right to reject this Bid, but that this Bid shall remain open and shall not be withdrawn for a period of sixty (60) calendar days from the date prescribed for its opening.
7. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the Undersigned within sixty (60) calendar days after the date set for the opening of this Bid, or at any other time thereafter before it is withdrawn, the undersigned will execute and deliver the required documents including, but not limited to, Document 00510 Agreement, Performance Bond, and Labor and Material Bond, all within ten (10) business days after personal delivery or after receipt in the mails of the Notice of Intent to Award.
8. Notice of Award or request for additional information may be addressed to the undersigned at the address set forth below.
9. The undersigned herewith encloses a cashier's check, certified check, or corporate surety bond in the amount of ten percent (10%) of the total of the Base Bid and made payable to: City of Berkeley.
10. The undersigned agrees to commence work under this Contract on the date established in Document 00700 General Conditions and to complete all work within the time specified in Document 00510 Agreement.
11. The undersigned agrees that, in accordance with Document 00700 General Conditions, Paragraph 11, liquidated damages for failure to complete all work in the contract within the time specified in Paragraph 10 above shall be as set forth in Document 00510 Agreement.

**BIDDER'S PROPOSAL**

**(Continued)**

12. The names of all persons interested in the foregoing Bid as principals are:

(IMPORTANT NOTICE: If Bidder or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-partners composing the firm; if Bidder or other interested person is an individual, give first and last names in full).

NAME OF BIDDER

Licensed in accordance with an act for the registration of Contractors, and with license number:

Signature of Bidder \_\_\_\_\_

NOTE: If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone Numbers:

\_\_\_\_\_

Date of Bid:

\_\_\_\_\_

**EXPERIENCE AND FINANCIAL QUALIFICATIONS**

The bidder has been engaged in the contracting business under State License Number \_\_\_\_\_ for a period of \_\_\_\_\_ years.

The bidder's three most recently completed contracts are:

|                    | I | II | III |
|--------------------|---|----|-----|
| Title of Project   |   |    |     |
| Owner              |   |    |     |
| Address            |   |    |     |
| Telephone No.      |   |    |     |
| Engineer in Charge |   |    |     |
| Date Accepted      |   |    |     |

Reference is hereby made to the following Bank or Banks as to the financial responsibility of the bidder:

Name of Bank \_\_\_\_\_ Address \_\_\_\_\_  
 \_\_\_\_\_

Reference is hereby made to the following Surety Companies as to the financial responsibility and general reliability of the bidder:

Company \_\_\_\_\_ Address \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

**BOND ACCOMPANYING BID**

KNOW ALL BY THESE PRESENTS:

That the undersigned \_\_\_\_\_ as Principal and the undersigned \_\_\_\_\_ as Surety are held and firmly bound unto the City of Berkeley, a public entity, as obligee, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a bid for:  
SPECIFICATION # **23-11587-C**

**West Side Aquatic Park: Site Modification, Irrigation Installation and Tree Planting.**

THE CONDITION OF THIS OBLIGATION IS SUCH that if the bid submitted by the said Principal be accepted and the contract be awarded to said Principal and said Principal shall within a period of ten (10) business days after such award enter into the contract so awarded and provide the required Performance Bond and provide the required Labor and Material Payment Bond, and timely provide all other endorsements, forms and documents required under Bidder's Proposal, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, The above bounden parties have executed this instrument

this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
(Month)

**(Corporate Seal)**

By \_\_\_\_\_  
Principal

By \_\_\_\_\_  
Surety

**(Corporate Seal)**

By \_\_\_\_\_  
Attorney in Fact

END OF DOCUMENT

**DOCUMENT 00510**  
**AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ by and between \_\_\_\_\_ whose place of business is located at \_\_\_\_\_, hereinafter referred to as "Contractor", and the City of Berkeley hereinafter referred to as "City", acting under and by virtue of the authority vested in City by the City Charter and the laws of the State of California.

City Contract # \_\_\_\_\_

**West Side Aquatic Park: Site Modification, Irrigation Installation and Tree Planting**  
**SPECIFICATION NO. 23-11587-C**

In consideration of the mutual covenants hereinafter set forth, Contractor and City agree as follows:

**Article I. Work**

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in strict accord with the plans, specifications, and all other terms and conditions of the Contract Documents.

**Article II. Project Manager**

- 2.1 City will designate a Project Manager, and that person will assume all duties and responsibilities and have the rights and authorities assigned to the Project Manager in the Contract Documents. Subject to the limitations of the City Charter, ordinances, and the Contract Documents, Project Manager shall have final authority over all matters pertaining to the Contract, and shall have authority to modify the Contract on behalf of City, to accept work, and to make decisions or actions binding on City, and shall have signature authority on behalf of City.

**Article III. Contract Time and Liquidated Damages**

- 3.1 Contract Time.

The Work will be Substantially Complete within **120 (One Hundred Twenty) calendar days** from the date when the Contract time commences to run as provided in Document 00700 General Conditions

The Work will be Finally Complete and ready for final payment within **180 (One Hundred Eighty) calendar days** from the date when the Contract time commences to run as provided in Document 00700 General Conditions.

- 3.2 Liquidated Damages.

City and Contractor recognize that time is of the essence of this Agreement and that City will suffer financial loss if Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of a delay in completion of the Work. Accordingly, City and Contractor agree that as liquidated damages for delay Contractor shall pay City: Five hundred and dollars (\$500.00) for each day that expires after the time specified herein for Contractor to achieve completion, until Work is finally complete and ready for use.

**Article IV. Contract Price**

- 4.1 City shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents: an amount not to exceed \_\_\_\_\_.

**Article V. Contractor's Representations**

In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.3 Contractor has given the Project Manager prompt written notice of all conflicts, errors, ambiguities or discrepancies that it has discovered in or among the Contract Documents and as-built and actual conditions and the written resolution thereof through Addenda issued by Project Manager is acceptable to Contractor.

**Article VI. Contract Documents**

The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of the following:

- 6.1 Contract Documents consist of the following documents, including all changes, addenda and modifications thereto:

|                |                      |
|----------------|----------------------|
| Document 00510 | Agreement            |
| Appendix A     | Scope of Work        |
| Appendix B     | Payment Provision    |
| Document 00680 | Contracting Policies |
| Document 00700 | General Conditions   |

- 6.2 There are no Contract Documents other than those listed above in this Article VI. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 General Conditions.

**Article VII. Miscellaneous**

- 7.1 If a bond is required, the Surety must be authorized to issue bonds in the State of California and must be acceptable to City. Contractor shall maintain insurance coverage according to this section and the requirements of Article 3 of Document 00700, General Conditions. Insurance limits for General Liability shall be \$2,000,000.00 each occurrence Bodily Injury and \$2,000,000.00 each occurrence Property Damage, with defense costs payable in addition to policy limits. Insurance limits for Automobile Liability shall be \$1,000,000.00 each person Bodily Injury, \$1,000,000.00 each occurrence Bodily Injury and \$1,000,000.00 each occurrence Property Damage, including coverage for owned, non-owned, and hired vehicles.
- 7.2 It is understood and agreed that in no instance is any party, signing this Agreement for or on behalf of City or acting as an employee or representative of City, liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 In entering into a public works contract or a sub-contract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. ' 15) or under the Cartwright Act, (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works

- 7.4 contract or the sub-contract. This assignment shall be made and become effective at the time City tenders final payment to the Contractor, without further acknowledgment by the parties.
- 7.5 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at City's offices, and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the work of the contract.
- 7.6 This Agreement shall be deemed to have been entered into in the City of Berkeley, County of Alameda, State of California, and governed in all respects by California law.
- 7.7 In the event of a Contractor's default under this Agreement, City may terminate Contractor's right to proceed with the Work by serving written notice.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals and have executed this contract in triplicate the day and year first above written.

CITY OF BERKELEY

COMPANY NAME

By \_\_\_\_\_  
City Manager

\_\_\_\_\_

By \_\_\_\_\_  
**PRESIDENT/OWNER**

ATTEST:  
CITY OF BERKELEY

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Secretary

REGISTERED BY

(Corporate seal when required)

By \_\_\_\_\_  
City Auditor

Pre-approved as to form:  
CITY ATTORNEY  
7/2002

## **APPENDIX A**

### **SCOPE OF WORK**

#### **GENERAL REQUIREMENTS**

1. Contractor shall maintain pedestrian and vehicular traffic control at all times in accordance with the “Manual of Traffic Controls” issued by the State of California, Department of Transportation. No additional payment will be made to the Contractor for traffic control. See: <http://www.dot.ca.gov/trafficops/camuted/camuted2014rev4.html>
2. Contractor shall post “no parking” signs no later than 72 hours in advance of the time of need. Pedestrian’s access to homes and businesses in the project area shall be maintained at all times. No additional payment will be made to the Contractor for posting “no parking” signs and for maintaining residential and business access.
3. The Contractor must request permission from the Project Manager prior to towing any vehicles that may interfere with the Contractor’s progress.
4. Contractor shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with all such laws, ordinances, regulations, orders and decrees, including all provisions of the Occupational Safety and Health Act of 1979 and all amendment thereto, and all applicable federal, state, municipal and local safety regulations.
5. The construction shall be in compliance with the Standard Specifications for Public Works Construction, “Green book” 2003 edition, sections 201, 212, 303, 308 and all other applicable sections.
6. All work which is defective in its construction or deficient in any of the requirements of these specifications, shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction.
7. Contractor shall endeavor, whenever possible, to restrict the use of water. The Contractor shall, when necessary, at its own expense, provide all power and water necessary for the work. When necessary, the Contractor shall provide filter materials at the catch basin to retain any debris and dirt flowing into the City’s drainage systems. Pollutants (any substance, material, or waste other than rainfall derived storm water) discharged to storm drains is strictly prohibited.
8. The contractor shall contact Underground Services Alert (USA) prior to excavation. Contractor must comply with all USA requirements. The Contractor shall be responsible for protecting the underground utilities that occur in the limits of the work.
9. The Contractor shall be responsible for the protection of public and private property adjacent to the work and shall exercise due caution to avoid damage to such property. The contractor shall be responsible for all damage to public and private property resulting from the concrete cutting, demolition, excavation and soil backfilling. Such damage may include, but is not limited to underground utilities (gas, water, sewer, electric, cable) and irrigation systems. Repairs and replacements shall be at least equal to existing improvements. Any damages to the private properties shall be restored to the satisfaction of the property owner and Project Manager within seven (7) days of the damage(s). All materials and construction methods to be used shall comply with local Water and Air Quality Management District and EPA codes and regulations.
10. Maintain barricades and construction work signs for the duration of the work.
11. Properly protect areas by the approved coverings during construction operations as directed and necessary.
12. Comply with the manufacturer’s recommendations for proper application of all materials.
13. Remove all waste and debris from the area of work overnight.
14. The work done herein shall be in accordance with these plans, specifications and the latest edition of the Standards Specifications and Standard Plans of the State of California, Department of Transportation. It is the intent of this contract to obtain a finished, workmanlike job, complete in place.
15. Contractor shall abide by the City of Berkeley Noise Ordinance (Ord. 13.40.050), which specifies time limitations when engine-driven equipment may be operated. All construction machinery and vehicles employed on the project shall be equipped with approved sound-muffling devices, and operated in a manner to cause the least noise consistent with efficient performance of the work.
16. The daily work period shall not begin prior to 8:00 a.m.

## **APPENDIX B**

### **PROJECT SUMMARY**

#### **PROJECT SUMMARY:**

The scope of services shall include, but is not limited to, work substantially similar to that presented below. The work consists cutting and removing a section of roadway to create two long tree wells over the mile-long park, installing irrigation, and planting trees in the Westside area of Aquatic Park in the City of Berkeley.

#### **SPECIFIC REQUIREMENTS:**

##### **Site Creation:**

- Contractor to cut asphalt in a straight line to expand and/or create two separate tree wells on the west side of West Bolivar Drive. (This will be explained more clearly at the mandatory pre-bid meeting)
- These two tree wells will measure five (5') foot wide tree well between the newly cut side along the frontage road (West Bolivar Drive) and the fenced area along the interstate. This will run the approximate one (1) mile length (4700') of the park from the southern end of the road, terminating at the northern gate. *See Map #1-7*
- The separation between the two tree wells will occur at 0.3 miles from the southern end, where a large tree (Monterey cypress) grows and the retaining wall extends out into the continuous tree well location. There will be about 100' with no tree well.
  - There is no cutting, material to be removed, irrigation to be installed at this section.
  - A clean 90-degree lateral cut will be made 50 feet from the tree on the northern and southern ends to terminate each tree well on each end of this location. This specific area will remain undisturbed. *See tree protection zone in Map #3*
- The cut side along the road is intended to be continuous and as straight as possible. Each straight section should be at least 100' long before incurring any minor course change.
- Completely remove and dispose of all asphalt and non-soil material associated with tree well creation.
- Fill newly created tree well to grade with landscape grade soil.

##### **Tree Planting:**

- Plant 100 15-gallon-sized trees at specified locations. Trees to be planted in level ground, centered in the five (5') foot wide tree well. Trees will be located at approximately 40-50-foot increments. *See Map #1-7 for locations. Further tree planting specs below.*
- Contractor is responsible for removing any non-soil material found while digging holes for trees (rocks/debris over 2"), grinding any remnant roots, and backfilling with landscape grade soil as needed.
- If excavated material is more than 30% non-soil (stump grindings, gravel, etc.) back fill with landscape grade soil. No compost, fertilizer, or amendment is required.
- Tree planting locations have been planned to avoid known underground utility conflicts. However, contractor is responsible for identifying and avoiding any underground utilities that may exist in the work site and understand that not all underground utilities are marked on the plans. If unknown items (utilities, old infrastructure, other unmovable debris) exist in planned tree wells, contractor will consult will COB project arborist to adjust the specific and surrounding sites, as needed.
- COB will provide all tree stock for this project. Trees will be available at COB Corporation Yard and reasonable accommodations will be met to meet for pickup of tree stock during regular M-F work hours.
- Tree species layout/arrangement along these identified tree wells to be determined by COB project manager upon securing tree stock.
- Follow all applicable ANSI A300 Standards and BMPs and all specifications.
- Contractor to provide all labor and equipment necessary for scope of work.
- Contractor to provide all tree stakes, tree tie, soil (as needed), debris disposal, staple gun, and other required tools to follow tree planting specifications.

### **Irrigation Installation:**

- Contractor to install a two (2") inch irrigation line along the entire length of the two newly created tree wells. This line is to be buried a 6-12" depth, no further than one (1') foot from the street edge.
- Contractor to install drip irrigation to reach each of the 100 trees using two bubbler heads for each tree.
- Contractor to install any irrigation line connection to the existing main line across West Bolivar Drive.
- Access to the main line across West Bolivar will use two low elevation points on West Bolivar Drive to install line and repave to an even grade. These two low elevation sites are near the protected cypress tree (*see map*).
- Contractor to install two separate two (2") inch ball valves to the irrigation system near the main line at the low elevation cross over points.
- If needed, two other low elevation points exist at the north end to connect irrigation to the main line.
- In addition, contractor to install 11 quick coupler stations at marked locations (*See map*) and connected to the main line.

### **Further Tree Planting Details:**

#### **Site Preparation:**

Planting sites in this contract may have existing roots, rocks, or other debris underground. Contractor is responsible for removing these items from the planting site. Pavement, concrete and rocks over two inches in diameter shall be removed from the planting pit to a minimum 24-inch depth.

*Below is a summary of the planting requirements. Contractor responsible for reviewing and ascribing to International Society of Arboriculture (ISA) Best Management Practices (BMP) Tree Planting, 2nd Edition.*

#### **Planter Pit:**

Follow ANSI A300 64.4 and ISA BMP Tree Planting 2nd Edition. Planter hole width to be minimum 1.5 times root ball diameter.

#### **Planting Depth:**

Bottom of trunk flare must be at or above finished grade. As defined in ISA BMP Tree Planting 2nd Edition pg. 16. If trunk flare is not visible at top of root ball/container, contractor shall expose trunk flare prior to planting.

#### **Root Care:**

After container is removed, root ball shall be trimmed in the following way:

- a. Thick circling roots – straighten and/or cut cleanly.
- b. Thin roots—make three to four vertical cuts ½ inch deep around the root ball. Spread bottom out if necessary.

#### **Tree Placement:**

Locate tree in hole and rotate to direct main branches away from street and pedestrian passages if possible.

#### **Watering at Planting:**

Water must be added to root zone and surrounding soil to bring root zone to field capacity at time of planting.

#### **Berm:**

Contractor to form a soil berm no less than three (3") inches but no greater than six (6") inches around perimeter of root ball.

### **Staking:**

Refer to ANSI A300 Part 3 and BMP Tree Support Systems, 3rd Edition. In addition, project specific include:

- If tree is delivered with a stake in the box/container, that stake is to be removed at planting.
- Each tree is to get four (4) treated stakes that are a minimum of eight (8') feet in height and two (2") inches in diameter. The four (4) stakes shall installed to a two (2') foot depth and be laterally stabilized by four (4) cross braces. The cross braces, to be provided by the contractor, will be 19" wide x 3.75" high, cut from 5/8" plywood or fencing. Any alternative measurements shall be approved by project manager and remain consistent through the project. The braces shall be nail/screwed to the stakes at about five (5') feet high. Nails shall not protrude from the surface of the wood. The square shaped stake arrangements will be in a consistent pattern, with edges parallel to the road.

### **Tree Ties:**

Trees are to be secured with ties of a stretchable material. Tie material and configuration should prevent main stem and branches from rubbing against staking and cross-braces. Contractor to present tying methods to Managing Arborist for approval prior to contract start.

### **Post-planting Inspection and Performance Criteria:**

COB urban foresters will inspect all trees following planting to ensure they are planted according to the contract specifications. Contractor responsible to correct all deviations noted during the post-work inspection.

## APPENDIX C PROJECT MAPS AND PHOTOS

### Attached Project Maps/Photos:

- Map Key
- Map #1-7: South to North, ~500-600' increments
- Existing Site Photos #1-4









**Current Site Photos:**



## PAYMENT PROVISIONS

### 1. GENERAL

City of Berkeley shall pay Contractor a total not to exceed amount of \$\_\_\_\_\_.

### 2. BILLING

The City will pay in full once work is completed, inspected, and accepted. The City must receive the final invoice from the contractor no later than thirty (30) calendar days after the contract expires.

Alternatively, Contractor may request progress payments to be submitted no more frequently than once per month by submitting a Schedule of Values for review and approval.

#### A. Schedule of Values:

1. Within ten (10) calendar days from issuance of Notice of Award and prior to the Contractor's application for the first progress payment, the Contractor shall submit a detailed breakdown of its bid by scheduled Work items and/or activities, including coordination responsibilities and project record document responsibilities. Where more than one subcontractor comprises the work of a work item or activity, the Schedule of Values shall show a separate line item for each subcontract. The Contractor shall furnish such breakdown, of the total Contract Sum, by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. The format and detail of the breakdown shall be as directed by Project Manager to facilitate and clarify future progress payments to Contractor for direct Contract Work. This breakdown shall be referred to as the Schedule of Values.
2. Contractor's overhead, profit, insurance, cost of bonds and/or other financing, as well as "general conditions costs," (e.g., site cleanup and maintenance, temporary roads and access, off site access roads, temporary power and lighting, security and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equal Contractor's total Contract Sum, less any allowances designated by Project Manager.
3. Project Manager will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, fair market cost allocations for the Work items listed. Upon favorable review by Project Manager, this Schedule of Values will be accepted for use by Project Manager. City and Project Manager shall be the sole judges of fair market cost allocations.
4. Any attempt to increase the cost of early activities, i.e., "front loading," will be rejected by City, resulting in a complete reallocation of monies until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work or refusal to process progress payments, until such time as the Schedule of Values is acceptable to City.

#### B. Payment Requests:

1. Progress payment requests shall be based upon Schedule of Values prices of all labor and materials incorporated in the Work, less the aggregate of previous payments.
2. Contractor shall, at the time any payment request is submitted, certify in writing the accuracy of the payment request and that Contractor has fulfilled all scheduling requirements of Document 00700 General Conditions. The certification shall be executed by a responsible officer of the Contractor. No progress payment will be processed prior to Project Manager receiving all requested, acceptable schedule update information.

3. Progress payments shall be made, based on total value of activities completed or partially completed, as determined by City with participation of Contractor, and based upon approved activity costs. Accumulated retainage will be shown as separate item in payment summary. If Contractor fails or refuses to participate in construction progress evaluation with City, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information for City.
4. Upon receiving Contractor's payment request, Project Manager will review the payment request and make necessary adjustments to percent of completion of each activity. One copy will be returned to Contractor with description of adjustments made. All parties will update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
5. If it is determined that the payment request is not a proper payment request suitable for payment, Project Manager shall return it to the Contractor as soon as practicable, together with a document setting forth in writing the reasons why the payment request is not proper.
6. As soon as practicable after approval of each request for progress payment, City will pay to Contractor in manner provided by law, an amount equal to ninety-five percent (95%) of Project Manager's estimate, or a lesser amount if so provided in Contract Documents, provided that payments may at any time be withheld if, in judgment of Project Manager, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected.
7. Before any progress payment or final payment is made, the Contractor may be required to submit satisfactory evidence that Contractor is not delinquent in payments to employees, subcontractors, suppliers, or creditors for labor and materials incorporated into Work.
8. City reserves and shall have the right to withhold payment for any equipment and/or specifically fabricated materials that, in the sole judgment of Project Manager, is not adequately and properly protected against weather and/or damage, prior to or following incorporation into the Work.
9. Granting of progress payment or payments by City, or receipt thereof by Contractor, shall not be understood as constituting in any sense acceptance of Work or of any portion thereof, and shall in no way lessen liability of Contractor to replace unsatisfactory work or material, though unsatisfactory character of work or material may have been apparent or detected at time payment was made.
10. When City shall charge sum of money against Contractor under any provision of Contract, amount of charge shall be deducted and retained by City from amount of next succeeding progress payment or from any other moneys due or that may become due Contractor under Contract. If, on completion or termination of Contract, such moneys due Contractor are found insufficient to cover City's charges against it, City shall have right to recover balance from Contractor or Sureties.

### **3. PAYMENT**

As soon as practicable after all required Work is completed in accordance with Contract, including Contractor maintenance after Final Acceptance, City will pay to Contractor, in manner provided by law, unpaid balance of contract price of Work, or whole contract price of Work if no progress payment has been made, determined in accordance with terms of Contract, less sums as may be lawfully retained under any provisions of Contract or by law. City will pay the Contractor within 30 days of an accurate and approved invoice.

**DOCUMENT 00680**  
**CITY OF BERKELEY CONTRACTING POLICIES**

Contractor shall comply with the City of Berkeley's adopted employment policies applying to City construction projects. The following certifications/forms shall be submitted by contractor for execution of contract by the City Manager:

- Commercial General and Automobile Liability Endorsement
- Memorandum of Understanding
- Workforce Composition
- Agreement for Change of Subcontractors
- Nuclear Free Zone Disclosure Form
- Oppressive States Compliance Statement
- Sanctuary City Compliance Statement
- Hardwood Disclosure Form
- Right to Audit Form
- Certification of Compliance with Equal Benefits Ordinance
- Taxpayer Identification Report
- Performance Bond - 100% (executed on enclosed Performance Bond form)
- Labor and Material Bond- 100%
- Copy of City of Berkeley Business License

**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:

| <b>Policy No.</b> | <b>Company Providing Policy</b> | <b>Expiration Date</b> |
|-------------------|---------------------------------|------------------------|
| _____             | _____                           | _____                  |
| _____             | _____                           | _____                  |
| _____             | _____                           | _____                  |

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 **Ian Kesterson, City of Berkeley, 1326 Allston Way Berkeley, CA, 94702.**
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

**CITY OF BERKELEY**  
**MEMORANDUM OF UNDERSTANDING**  
**(MOU)**

1. In performance to this contract, the Contractor (and all Subcontractors) agree not to discriminate pursuant to Section 13.26 of the Berkeley Municipal Code.
2. In performance to this contract, the Contractor agrees that he/she is also responsible for his/her Subcontractors' compliance with Section 13.26 of the Berkeley Municipal Code.
3. In performance to this contract, the Contractor agrees to comply with Section 13.26 of the Berkeley Municipal Code as it applies to the First Source Program (see Section 13.26.08).

The Contractor agrees to submit periodic employment and wage reports to the City's Contract Compliance Officer upon reasonable request.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Assistant to City Manager/  
Contract Compliance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## 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 which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which 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 which require a combination of basic scientific or technical knowledge and manual skill which 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 Careers" 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 laborer

**AGREEMENT FOR CHANGE IN SUB-CONTRACTORS**

I agree to use the Subcontractor(s) listed in the signed contract with the City of Berkeley. If it should become necessary to change Subcontractors, I will notify the Public Works Engineering Division by completing the following information:

| Current Subcontractor(s) | Alternate Subcontractors | Reason for Change | Date |
|--------------------------|--------------------------|-------------------|------|
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |
|                          |                          |                   |      |

Signed by:

Verified by:

\_\_\_\_\_  
Prime Contractor

\_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
City of Berkeley Contract Compliance Officer

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

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

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

**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, this disclosure form may be signed by more than one individual, 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.

I (we) declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

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

Printed Name and Title(s): \_\_\_\_\_

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

**CITY OF BERKELEY**  
**OPPRESSIVE STATES COMPLIANCE STATEMENT FOR CONSTRUCTION SERVICES**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter “Contractor”), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S (hereafter “Resolution”). Contractor 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.

Contractor 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).

“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.”

“Oppressive State” means: 1) **Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang.**

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.

Contractor further understands and agrees that Contractor’s failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Contractor 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, Contractor’s business structure and the geographic extent of its operations. By executing this Statement, Contractor 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, Contractor 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: \_\_\_\_\_

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

Business Entity: \_\_\_\_\_

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

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

Contract description/Specification No.: \_\_\_\_\_

**CITY OF BERKELEY**  
**Sanctuary City Compliance Statement**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
  
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
  - i. The City's computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

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 Data Broker or Extreme Vetting services to ICE.

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

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

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. Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_, California.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

Business Entity: \_\_\_\_\_

**CITY OF BERKELEY  
HARDWOOD DISCLOSURE FORM  
For use by vendors on contracts utilizing lumber**

1. I understand that on December 12, 1995, the City Council directed staff not to purchase lumber from companies that purchase or sell wood or paper products that come from tropical rainforests. I understand that wood species with tropical origins include, but are not limited to: Apitong, Banak, Bocote, Bubinga, Cocobolo, Cordia, Ebony, Goncalo alves, Greenheart, Iroko, Jelutang, Koa, Luauan, Mahogany, Meranti, Padauk, Purpleheart, Ramin, Rosewood, Satinwood, Teak, Virola, Wenge, and Zebrawood.
2. I am knowledgeable about the wood and paper products purchased and sold by this company.
3. This company does not currently purchase or sell wood or paper products having their origins in tropical rainforests. In addition, this company will not, for the duration of its contract with the City of Berkeley, purchase or sell wood or paper products having their origins in tropical rainforests.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

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

Printed Name & Title:

\_\_\_\_\_

Company:

\_\_\_\_\_

I am unable to sign this disclosure form for the following reason(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## 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”) shall 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 their domestic partner 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.

Bidder:

\_\_\_\_\_  
Name of Bidder

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

Name: \_\_\_\_\_  
Print Name

Its: \_\_\_\_\_  
Title

Dated: \_\_\_\_\_

**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

#### FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor       Full Compliance       Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_

Staff Name (*Sign and Print*):

Date:

**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.

Contractor's signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

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

## TAXPAYER IDENTIFICATION REPORT

COMPANY NAME \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

SOCIAL SECURITY NUMBER: \_\_\_\_\_

OR

EMPLOYER IDENTIFICATION NUMBER: \_\_\_\_\_

**My Company is a Corporation**

**My Company is not a Corporation**

**I certify that the above information is true and correct:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) requires the above reporting information be furnished to the City.

Persons who do not furnish their tax information numbers become subject to backup withholding by the City at a rate of 20% from each disbursement made to the recipient.

**PERFORMANCE BOND  
CALIFORNIA PUBLIC WORKS**

KNOW ALL MEN BY THESE PRESENTS,

That we, \_\_\_\_\_  
\_\_\_\_\_ as Principal, and  
\_\_\_\_\_, a Corporation organized and existing  
under the laws of the State of \_\_\_\_\_ and authorized to transact surety  
business in the State of California, as Surety, are held and firmly bound unto the City of Berkeley  
(hereinafter called Obligee), in the sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_), for the payment whereof well and truly to be made and we  
each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

THE CONDITION of the above obligation is such that, Whereas, the above named bounden principal  
entered into a contract dated \_\_\_\_\_, 20 \_\_\_\_ with the said Obligee to do and  
perform the following work, to-wit: which contract is hereby referred to, incorporated by reference, and  
made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the  
above bounden Principal shall well and truly keep, do, pay and perform, each and every, all and singular,  
all the matters, provisions, undertakings, covenants, terms, conditions, agreements and things in said  
contract set forth and specified to be by the said principal kept, done, paid and performed at the time and  
in the manner in said contract specified, and shall pay over, make good and reimburse to the above-named  
Obliged, all loss and damages which said Obligee may sustain by reason of failure or default, or breach  
on the part of said Principal, then this obligation shall be void; otherwise to be and remain in full force and

effect.

Whenever Principal shall be, and is declared by Obligees to be in default under the Contract, the Obligees having performed Obligees' obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1) Complete the Contract in accordance with its terms, provisions, undertakings, covenants, agreements, clauses, and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms, provisions, undertakings, covenants, agreements, clauses, and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Obligees elects, upon determination by the Obligees and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Obligees, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the amount payable by Obligees to principal under the contract and amendments, thereto, less the amount properly paid by Obligees to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of Obligee.

If any action or law or in equity is brought to enforce or interpret the provisions of this bond, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

SIGNED AND SEALED THIS \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Principal

\_\_\_\_\_

\_\_\_\_\_  
Surety Attorney in Fact

## CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01** THAT WHEREAS, City of Berkeley (“City”) has awarded to \_\_\_\_\_ as Principal, dated the \_\_\_ day of \_\_\_\_\_ (the “Contract”), titled \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, which Contract is by this reference made a part hereof, for the work of the following Contract:
- 1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
- 1.03** NOW, THEREFORE, we, the undersigned Principal and **(Name of Surety)** \_\_\_\_\_, as Surety, are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE (\$ \_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- 1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by City, or its subcontractors shall fail to pay any of the persons named in California Civil Code §3181, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys’ fees, otherwise the above obligation shall become and be null and void.
- 1.05** This bond shall inure to the benefit of any of the persons named in California Civil Code §3181, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic’s Lien Law.
- 1.06** Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
- 1.08** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company:

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

**DOCUMENT 00700**  
**GENERAL CONDITIONS**

1. GENERAL

A. DOCUMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between City or its representatives and a Subcontractor or Sub-sub-contractor or (2) between any persons or entities other than City and Contractor. Contractor is fully responsible for all acts and omissions of its Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions.

B. EXERCISE OF CONTRACT RESPONSIBILITIES

City, and Project Manager, as City's representative, do not, in exercising their responsibilities and authorities under the Contract Documents, assume any duties or responsibilities to any subcontractor or supplier, nor do City or Project Manager assume any duty of care to Contractor, its subcontractors, or suppliers.

2. CONTRACT EXECUTION AND COMMENCEMENT OF THE WORK

A. EXECUTION OF CONTRACT

When notified by City, within ten (10) business days, Contractor will deliver to City the Contract with signature affixed thereto, together with bonds and insurance prescribed by this Agreement along with any other requested documents. City will return to the Contractor a fully executed Contract within twenty (20) business days of its receipt from Contractor.

B. COMMENCEMENT OF WORK

The Contract Times will commence to run on the day indicated in the Notice to Proceed. City may give a Notice to Proceed at any time within thirty (30) days after the Execution of Contract. City reserves the right to set the commencement date at any time within sixty (60) days of Contract Execution, if a Notice to Proceed is given.

3. INSURANCE

A. Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by proposed contract the following types of insurance with an insurance carrier having an A.M. Best rating of VII or higher:

1. Comprehensive general liability insurance with limits noted in the Agreement
2. Comprehensive automobile liability insurance with limits noted in the Agreement
3. Full workers' compensation insurance for all persons whom Contractor 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.

- B. Insurance policies shall contain an endorsement containing the following terms:
1. City, their employees, representatives and agents shall be named as additional insured, but only with respect to liability arising out of the activities of the named insured.
  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.
  3. Written notice of cancellation or of any limits reduction change in said policy shall be mailed to the City thirty (30) days in advance of the effective date thereof, and ten (10) days written notice to the same in advance of payment of any insurance claims under such policies to any person, firm or entity
  4. Contractor's insurance shall be primary insurance and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured. Policies shall include cross-liability and severability of interest clauses or endorsements.
- C. Certificates of Insurance and Endorsements shall have clearly typed thereon City Contract number and title of Contract.
- D. Insurance shall be maintained by Contractor in full force and effect during entire period of performance of Contract and shall be kept in force during warranty and guarantee periods.

4. SPECIFICATIONS AND PLANS

The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Specifications to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract Documents or from prevailing custom or trade usage as being required to produce this intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. The intent of the Plans specifically includes the intent to depict construction that complies with all applicable laws, codes and standards. The Divisions and Sections of the Specifications and the identifications of any Plans shall not control Contractor in dividing the Work among Subcontractors or suppliers or delineating the work to be performed by any specific trade.

Reasonably implied parts of the Work shall be performed as "incidental work" even though absent from the Specifications and Plans. "Incidental" work shall be performed by Contractor without extra cost to City. Incidental work includes any work not shown on Plans nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Plans or described in the Specifications, or is necessary or required to make each installation satisfactory, legally operable, functional, consistent with the intent of the Specifications and Plans or the requirements of the Contract Documents. Incidental work shall be treated as if fully described in Specifications and shown on Plans, and expense thereof shall be included in price bid.

5. CITY AND PAYMENT

A. CITY'S REPRESENTATIVES

City's designated authorized representatives will have limited authority to act on behalf of City as set forth in the Contract Documents. Except as otherwise provided in these General Conditions, City shall issue all communications to Contractor through Project Manager, and Contractor shall issue all communications to the City through Project Manager.

B. MEANS AND METHODS OF CONSTRUCTION

Subject to those rights specifically reserved in the Contract Documents, City and Project Manager shall not supervise, direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work. City and Project Manager shall not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

C. RECEIPT AND PROCESSING OF APPLICATIONS FOR PAYMENT

Contractor shall submit applications for progress payments or final payments, and warrant title to all Work covered by each application for payment. City shall review Contractor's applications for payment and make payment thereon as required.

6. CONTROL OF THE WORK

A. SUPERVISION OF WORK BY CONTRACTOR

Contractor shall supervise, inspect and direct the work competently and efficiently, devoting such attention thereto and applying such personal skills and expertise as may be required and necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents.

Contractor shall keep on the Site at all times during Work progress a competent Superintendent. The Superintendent will be Contractor's representative at the site and shall have complete authority to act on behalf of Contractor. All communications to the Superintendent shall be as binding as if given to the Contractor.

B. ACCESS TO WORK SITE

During performance of Work, City and its agents, consultants, and employees may at any time enter upon Work, shops where any part of Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities therefore, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as City's interests may require. Other contractors performing work for City may also, for all purposes required by their respective contracts, enter upon Work. Subject to this right, Contractor shall have sole care, custody and control of its work areas.

7. WARRANTY, GUARANTEE AND INSPECTION OF WORK

A. WARRANTY AND GUARANTEE

Contractor warrants that all construction work and construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of the Contract Documents. Contractor warrants that the Work, shall be new, shall be suitable for its intended use, shall be free from defects in materials, construction and workmanship, and shall conform in all respects with all applicable requirements of federal, state and local laws, licenses, and permits, the Specifications and Plans, applicable codes and standards, and all other requirements of the Contract Documents. If, within one year after the date of Completion, or such longer period of time as may be prescribed by laws, regulations, or by specific Contract requirements, any Work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City or Project Manager's written instructions, (i) correct such defective Work or, if it has been rejected by City or Project Manager, remove it from the site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

B. INSPECTION OF WORK

All materials, equipment and workmanship used in the Work shall be subject to inspection or testing at all times during construction and/or manufacture in accordance with the terms of this Contract. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by Project Manager, its agents, or independent contractors retained by Project Manager to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's site safety procedures and program so that they may comply therewith as applicable. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Project Manager with the required certificates of inspection, or approval.

8. DISPUTES

Should any dispute arise under this Contract respecting the true value of any Work performed, of any Work omitted, of any extra Work which the Contractor may be required to perform, time extensions, respecting the size of any payment to the Contractor during the performance of this Contract, or of compliance with Contract procedures, said dispute shall be decided by City and its decision shall be final and conclusive. If the Contractor should disagree with City's decision, the Contractor's sole and exclusive remedy is to file a claim pursuant to Part 3, Division 3.6, Title 1 of the California Government Code. Notwithstanding and pending the resolution of any claim, the Contractor shall diligently prosecute the disputed Work to Final Completion.

9. LEGAL AND MISCELLANEOUS

A. RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

1. City and all of its officers and employees associated with Work, including, but not limited to, Project Manager, and each representative of City, including its officers, consultants, agents, and employees, respectively, shall not be liable or accountable in any manner for:

- a. loss or damage that may happen to Work or any part thereof;
- b. loss or damage to materials or other things used or employed in performing Work;
- c. injury, sickness, disease, or death of any person, including, but not limited to, workers and the public; or
- d. damage to property;

resulting from any cause whatsoever except their sole negligence or active negligence, attributable to performance or character of Work, and Contractor releases said parties from any and all such claims.

2. To the furthest extent permitted by California Civil Code Section 2782, Contractor shall assume defense of, and indemnify, and hold harmless City and all of its officers and employees connected with Work, Project Manager and all other representatives of City, and their officers, consultants, agents, and employees, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of Work, failure to perform Work, or condition of Work which is caused in whole or part by any act or omission of Contractor, subcontractors, any one directly or indirectly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of City or any party required to be indemnified hereunder.

3. With respect to third party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City and all of its officers and employees connected with Work, including Project Manager and each representative of City, and their officers, consultants, agents, and employees.
4. Approval or Purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its subcontractors of any tier, or the officers or agents of any of them.
5. To the furthest extent permitted by Civil Code Section 2782, the indemnities, releases of liability and limitations of liability, and limitations of remedy expressed throughout this Contract shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, or completion of this Contract. If Contractor fails to perform any of these defense or indemnity obligations, City may in its discretion back charge Contractor for its costs and damages resulting therefrom and withhold such sums from progress payments or other contract monies which may become due.

**B. NOTICE OF CONCEALED OR UNKNOWN CONDITIONS**

1. Before commencing work of digging trenches or excavation, Contractor shall review all information available regarding subsurface conditions. Contractor shall also contact Underground Service Alert ("USA") and secure from it all information in its possession regarding underground conditions, including Underground Facilities at the Site. Contractor is charged with knowledge of all subsurface conditions reflected in USA records.
2. If either of the following conditions is encountered at Site, notice by Contractor shall be given in writing to Project Manager promptly before conditions are disturbed (except in an emergency), and in no event later than seven (7) days after first observance of:
  - a. Subsurface or latent physical conditions which differ materially from those indicated in the Contract Documents.
  - b. Unknown physical conditions of an unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in Contract Documents.
3. In response to Contractor's written notice, Project Manager will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of Work, Project Manager will issue a change order under the procedures described in the Contract Documents.
4. If Project Manager determines that physical conditions at Site are not latent or are not materially different from those indicated in the Contract Documents or that no change in terms of Contract is justified, Project Manager shall so notify Contractor in writing, stating reasons. If City and Contractor do not agree on an adjustment in Contract Sum or Contract Times, Contractor shall proceed with Work as directed by Project Manager and prosecute the dispute according to Article 8, Disputes.
5. Contractor shall not be entitled to any adjustment in the Contract Sum or Times regarding claimed latent or materially different site conditions if:
  - a. Contractor knew of the existence of such conditions at the time Contractor submitted its bid; or
  - b. Contractor should have known of the existence of such condition as a result of having fully complied with the requirements of Paragraph 2 herein; or

- c. If Contractor failed to give the written notice within the time required above.

C. SUSPENSION OF WORK

City may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as City may determine. An adjustment shall be made for increases in cost of performance of Contract caused by any such suspension, delay or interruption. No adjustment shall be made to extent: (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or (b) that an equitable adjustment is made or denied under another provision of Contract; or (c) that the suspension of work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee.

D. TERMINATION OF CONTRACT FOR CONVENIENCE

1. City may terminate performance of Work under Contract in accordance with this clause in whole, or from time to time in part, whenever City shall determine that termination is in best interest of City. Termination shall be effected by delivery to Contractor of notice of termination specifying extent to which performance of Work under Contract is terminated, and date upon which termination becomes effective. If so terminated, contractor will be reimbursed for his actual expenses up to the date specified in the notice of termination, including reasonable termination related expenses, plus a reasonable amount for overhead expenses and profit.

E. REMEDIES

Subject to Article 8, all claims, counter-claims, disputes and other matters in question between City and Contractor arising out of or relating to this agreement or its breach will be decided in a court of competent jurisdiction within the State of California, County of Alameda. All City remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and City shall have any and all equitable and legal remedies which it would have according to law.

F. LIMIT OF LIABILITY

CITY, ITS EMPLOYEES, OFFICERS, DIRECTORS, CONSULTANTS OR AGENTS SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

G. SEVERABILITY

Any provisions or portions thereof of this Agreement prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in 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, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of the provisions and 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.

10. MODIFICATIONS OF CONTRACT

- A. No modification or deviation from the Contract Documents will be permitted except by written addenda or written change order.

- B. Project Manager, before the date of Final Completion of Work, may order changes in Work or Contract Times herein required, and may order extra materials and extra work in connection with performance of Contract, and Contractor shall promptly comply with such orders. Any such orders shall be diligently carried out by Contractor in accordance with the Contract Documents. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as Contractor and City may agree upon as reasonable and proper allowance for increase or decrease in cost of Work. If agreement cannot be reached, then City shall reach a determination, which shall be final, subject to Contractor's rights under Paragraph 8 herein.
- C. Alterations, modifications or extras which result in change in Contract Sum or Contract Times or both, shall be effected by written Contract Modification which has been approved by City or Project Manager. Those alterations or modifications which do not result in change in Contract Sum or Contract Times, and do not substantially change Specifications and Plans, shall be effected only by written directive to Contractor from Project Manager.
- D. Changes in the Work made pursuant to this Paragraph and extensions of Contract time necessary by reason thereof shall not in any way release the guarantees/warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.

#### 11. TIME ALLOWANCES

##### A. TIME ALLOWANCE FOR PERFORMANCE OF CONTRACT

- 1. When Contract has been signed by Contractor and City, City will serve a Notice to Proceed upon Contractor.
- 2. Start date for Contract Times shall be on the date indicated in the Notice to Proceed. Total number of calendar days for completion of Work on Contract shall be as provided in Document 00510.

##### B. CHANGE OF CONTRACT TIMES

- 1. The Contract Times (or milestones) may only be changed by Change Order and all time limits stated in the Contract Documents are of the essence of the Agreement. The Contract Times will be adjusted in an amount equal to the time lost due to the following:
  - a. Changes in the Work ordered by City;
  - b. Acts or neglect by City, or its Project Manager, acts or neglect of utility owners, acts or neglect of other Contractors performing other Work, provided Contractor has fully and completely performed its responsibilities under the Contract Documents, including but not limited to, its cooperation and coordination responsibilities required by the Contract Documents;
  - c. Fires, floods, unusually severe weather conditions, earthquakes, civil disturbances, or acts of God, provided damage resulting therefrom is not the result of Contractor's failure to properly protect the Work as required by the Contract Documents.

Notwithstanding the foregoing, the Contract Times shall not be extended unless Contractor has actually been prevented from completing any part of the Work within the Contract Times due to delay which is (i) beyond the control of Contractor and (ii) due to reasons for which Contractor is not responsible and (iii) a claim for delay is made as provided for herein. Delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor.

2. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of both City and Contractor, an extension of Contract Times in an amount equal to the time loss due to such delay shall be the Contractor's sole and exclusive remedy for such delay.

C. NOTICE OF DELAY

Within seven (7) calendar days of the beginning of any delay Contractor shall notify Project Manager, in writing, of all anticipated delays resulting from the delay event in question.

12. WORKING CONDITIONS AND PREVAILING WAGES

A. USE OF SITE

1. All portions of Work, and adjacent areas affected by the Work, shall be maintained at all times in neat, clean and sanitary condition.
2. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land areas identified in and permitted by the Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements, or as designated by Project Manager, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of Work.

B. PROTECTION OF WORK, PERSONS AND PROPERTY

1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Contractor shall be responsible for all damage to Work, property or structures, and all injuries to persons, arising from the performance of the Contract.
2. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

C. RESPONSIBILITY FOR SAFETY AND HEALTH

1. Contractor shall insure that Contractor, Contractor's employees, agents, invitees, subcontractors and their employees, agents and invitees while at Site comply with applicable health and safety laws and rules and regulations issued pursuant thereto, and City's safety regulations, as amended from time to time.
2. Safety of all persons employed by Contractor or subcontractors and their respective agents and invitees on Site shall be the full responsibility of Contractor.
3. Contractor shall confine all persons under Contractor's employ or employ of subcontractors or any other person acting on behalf of Contractor or subcontractors to that portion of Site where work under Contract is to be performed, to routes to be designated by City for ingress and egress thereto and to any other areas City may expressly permit Contractor to use. Within such areas, except those routes for ingress and egress over which Contractor has no right of control, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

D. EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or City, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by City or Project Manager.

E. USE OF ROADWAYS AND WALKWAYS

Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Wherever interference becomes necessary for proper and convenient performance of Work, and no satisfactory detour route exists, Contractor shall, before beginning interference, provide satisfactory detour, temporary bridge, or other proper facility in accordance with the controlling agency's requirements, for traffic to pass around or over interference and shall maintain it in satisfactory condition as long as interference continues, all without direct payment unless otherwise provided in Contract Documents. Nothing herein shall be interpreted to relieve Contractor of its obligation to conform to the requirements of the Berkeley Municipal Code.

F. PREVAILING WAGES

1. Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations and City to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

2. Contractor shall forfeit, as a penalty to City, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, of such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under this contract by him or her or by any subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant this paragraph 2 and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under said contract, pursuant to this contract, and the terms of the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by City. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code section 1775.

3. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on Work provided for in Contract, provision that subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the Labor Code.

G. PUBLIC CONVENIENCE

1. Contractor shall conduct operations to offer least possible obstruction and inconvenience to public traffic.

2. Convenience of adjacent City's and Project Occupants shall be provided for; access to driveways, houses, and buildings adjacent to work shall be maintained and temporary approaches provided and kept in good condition.

3. Contractor shall be responsible for the necessary cleaning, dust control and repairing of adjacent drives and streets resulting from Contractor's operations. Cleaning shall occur immediately on a daily basis.

### 13. CITY OF BERKELEY CONTRACTING POLICIES

#### A. NONDISCRIMINATION

During prosecution of the Work to be done under the Contract, Contractor agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26, including, but not limited to, the following:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
2. Contractor shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Contractor shall submit forms supplied by the City to monitor this non-discrimination provision.

#### B. CONFLICTS OF INTEREST PROHIBITED

1. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of the Agreement.
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 Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

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.

#### C. NUCLEAR FREE BERKELEY ORDINANCE

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

#### D. CONTRACTUAL RELATIONS WITH PROHIBITED ENTITIES

##### 1. OPPRESSIVE STATES

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

1. The governing regime in any Oppressive State.
  2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
  3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. 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 Aho, Kham, and U-Tsang.
- c. Contractor's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract for Default.
1. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for five (5) years from the date this Contract is terminated.

#### E. REQUIRED AND PROHIBITED WORK MATERIALS

##### 1. RECYCLED PAPER

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

##### 2. TROPICAL HARDWOODS

- a. Contractor shall comply with the terms of Resolution No. 58,291-N.S. prohibiting the use of any tropical hardwood or wood product, including, but not limited to, those enumerated in Resolution No. 58,291-N.S. Contractor must submit, with its bid, a statement Tropical Hardwood Disclosure form.
- b. Except as expressly permitted by the application of Sections 3.B and 4.B. of Resolution No. 58,291-N.S., Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods or tropical wood products.
- c. Contractor's failure to comply with this section shall constitute a default of this Agreement and Contractor agrees that City may take any of the following actions:
  1. terminate this Agreement for Default;
  2. withhold funds due the Contractor under any contract with the City;
  3. order revision of the Agreement based upon a material breach of Agreement provisions or pertaining to representations made in bidding, execution or performance of the Agreement;
  4. Disqualify the Contractor from eligibility for providing commodities or services to the City for a period not to exceed five (5) years, with a right to review and reconsideration by the

City after two (2) years upon a showing of corrective action, indicating violations are not likely to recur.

- d. Notwithstanding the provisions of Section 3.2 of the Agreement, Contractor acknowledges and agrees that its failure to comply with this requirement justifies liquidated damages in an amount equal to Contractor's net profit, or five percent (5%) of the total contract amount, whichever is greater.

1. Liquidated damages under this provision shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any contract with the City.

### 3. VIRGIN REDWOOD

Contractor agrees to comply with the City Council's October 29, 1996, directive not to purchase virgin redwood for the prosecution of the work to be done under this Contract and in its place purchase and use:

1. Redwood that has been previously used or
2. Certified, sustainable-harvested redwood as the preferred alternative to virgin and non-certified redwood, and not pressure-treated lumber of other species as an alternative to redwood.

### 4. TREATED WOOD

- a. Contractor shall comply with the terms of Resolution No. 61,724-N.S. (Appendix 00812-E) prohibiting the use of Pentachlorophenol, arsenic and creosote treated wood. No such wood shall be used by the contractor in this project.

### 5. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Contractor agrees to provide the City Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Contractor an opportunity to discuss and respond to any findings before a final audit report is filed.

## F. BERKELEY EQUAL BENEFITS ORDINANCE

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.
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.
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

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 and 13, as applicable. 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.