



STAFF REPORT

Date: May 24, 2016
To: City Council
From: Bryan Montgomery, City Manager

Approved and Forwarded to City Council:

Bryan F. Montgomery, City Manager

Subject: **Services Agreement with Shine House Cleaning Service for Facility Maintenance Services**

Summary and Background

Shine House Cleaning Service has been successfully providing supplemental, part-time facility maintenance services to the City for last two years. With the retirement of our Facility Maintenance Technician, we believe it is most cost-effective to expand the hours to Shine House Cleaning to provide these services. The attached Services Agreement outlines the proposed terms and conditions.

Fiscal Impact

The total cost of these services is estimated at slightly less than \$40,000 for the upcoming fiscal year.

Recommendation

Adopt the resolution approving the Services Agreement with Shine House Cleaning Services and authorize the City Manager to execute the Agreement.

Attachments

1. Resolution
2. Proposed Agreement

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT
BETWEEN THE CITY OF OAKLEY AND SHINE HOUSE CLEANING SERVICE
FOR THE PROVISION OF FACILITY MAINTENANCE SERVICES**

BE IT RESOLVED by the City Council of the City of Oakley that the City Manager is hereby authorized and directed to sign on behalf of the City the Services Agreement with Shine House Cleaning Service, a true and accurate copy of which is attached hereto.

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Oakley held on the 24th day of May, 2016, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Kevin Romick., Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

OAKLEY



CALIFORNIA

SERVICES AGREEMENT BETWEEN THE CITY OF OAKLEY AND SHINE HOUSE CLEANING SERVICE

THIS AGREEMENT for services is entered into by and between the City of Oakley, a municipal corporation in the State of California (hereinafter referred to as "City") and Shine House Cleaning Service, hereinafter referred to as ("Company") as of June 1, 2016 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Company shall provide to City the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall be based on hours worked and Company shall perform the duties outlined in Exhibit A, unless the term of the Agreement is otherwise terminated, as provided for in Section 8. Any time provided to Company to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Company shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Company is engaged in the geographical area in which Company practices its profession. Company shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Company's profession.
- 1.3 Assignment of Personnel.** Company shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Company shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 Time.** Company shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Company's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Company a sum not to exceed the amounts described in Exhibit B, notwithstanding any contrary indications that may be contained in Company's proposal, for services to be performed and reimbursable costs incurred under this Agreement. City shall pay Company for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Company for services rendered pursuant to this Agreement. Company shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Company shall not bill City for duplicate services performed by more than one person.

Company and City acknowledge and agree that compensation paid by City to Company under this Agreement is based upon Company's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Company. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Company and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Company shall submit invoices, not more often than twice per month during the term of this Agreement, based on the cost for services performed incurred prior to the invoice date. Invoices shall contain the following information:
- The beginning and ending dates of the billing period;
 - The total number of hours of work performed under the Agreement by Company and each employee, agent, and subcontractor of Company performing services hereunder, as well as a separate notice which shall include an estimate of the time necessary to complete the work described in Exhibit A.
 - The Company's principal's signature.
- 2.2 Bi-Monthly Payment.** City shall make no more than bi-monthly payments, based on invoices received, for services satisfactorily performed. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Company.
- 2.3 Total Payment.** City shall pay for the services to be rendered by Company pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Company in rendering services pursuant to this Agreement, except for mileage reimbursement as stipulated in Section 2.5. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Company submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment approved by the City Manager, which shall not exceed the maximum amount allowed by the Oakley Municipal Code.
- 2.4 Fees.** Fees for work performed by Company on a \$17 per hour basis shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit B. The City Manager is authorized to increase the hourly rate effective July 1st of every year during the term of the agreement, if said increase does not exceed two and one-half percent (2.5%) over the previous year.
- 2.5 Reimbursable Expenses.** Documented mileage shall be reimbursed at the prevailing IRS rate and said documentation must be presented as part of the services invoice in order to be eligible.
- 2.6 Payment of Taxes.** Company is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
-

2.7 Payment upon Termination. In the event that the City or Company terminates this Agreement pursuant to Section 8 of this Agreement, the City shall compensate the Company for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Company shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.8 Authorization to Perform Services. The Company is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City's Chief Building Official.

Section 3. FACILITIES AND EQUIPMENT. City shall provide janitorial supplies and equipment in addition to anyl furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Company's use. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Company, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Company and its agents, representatives, employees, and subcontractors. Company shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Company shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Company's fee. Company shall not allow any subcontractor to commence work on any subcontract until Company has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Verification of the required insurance is attached hereto and incorporated herein as Exhibit C.

4.1 Variation. The City may approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise fully protected.

4.2 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Company shall provide written notice to City at Company's earliest possible opportunity and in no case later than five days after Company is notified of the change in coverage.

4.3 Remedies. In addition to any other remedies City may have if Company fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Company's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Company to stop work under this Agreement or withhold any payment that becomes due to Company hereunder, or both stop work and withhold any payment, until Company demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND COMPANY'S RESPONSIBILITIES. Company shall to the fullest extent allowed by law, with respect to all Services performed in connection with this Agreement, defend with counsel acceptable to the City, and indemnify and hold the City and its officials, officers, employees, agents, and volunteers harmless from and against any and all losses that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Company ("Claims"). Company will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liability"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liability is caused by the sole negligence, active negligence, or willful misconduct of the City.

With respect to third party claims against the Company, the Company waives any and all rights of any type of express or implied indemnity against the indemnitees.

However, notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, in accordance with California Civil Code Section 1668, nothing in this Agreement shall be construed to exempt the City from its own fraud, willful injury to the person or property of another, or violation of law. In addition, and notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Company to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF COMPANY.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Company shall be an independent contractor and shall not be an employee of City and there is absolutely no employer-employee relationship hereby created. City shall have the right to control Company only insofar as the results of Company's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Company accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Company and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System

(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Company, Not Agent.** Except as City may specify in writing, Company shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Company shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Company and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Company and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Company represents and warrants to City that Company and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Company represents and warrants to City that Company and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Company and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Company shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Company under this Agreement. Company shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

Company shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon 30 days written notification to Company.
-

Company may cancel this Agreement upon 30 days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Company shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Company delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Company or prepared by or for Company or the City in connection with this Agreement.

- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.3 Assignment and Subcontracting.** City and Company recognize and agree that this Agreement contemplates personal performance by Company and is based upon a determination of Company's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Company. Company may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Company shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.4 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Company shall survive the termination of this Agreement.
- 8.5 Options upon Breach by Company.** If Company materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:
- 8.5.1** Immediately terminate the Agreement;
 - 8.5.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Company pursuant to this Agreement;
 - 8.5.3** Retain a different Company to complete the work described in Exhibit A not finished by Company; or
 - 8.5.4** Charge Company the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Company pursuant to Section 2 of this Agreement if Company had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Company's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records,
-

files, or any other documents or materials, in electronic or any other form, that Company prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Company hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Company agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 Company's Books and Records.** Company shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Company to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Company to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
-

- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Company shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Company may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Company in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Company shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Company hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Company was an employee, agent, appointee, or official of the City in the previous twelve months, Company warrants that it did not participate in any manner in the forming of this Agreement. Company understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Company will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Company will be required to reimburse the City for any sums paid to the Company. Company understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Company agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by the City's Chief Building Official ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.**

Any written notice to Company shall be sent to:
SHINE HOUSE CLEANING SERVICE
Attn: Francisca M. Rojas
313 Deerpark Way
Oakley, Ca. 94561

Any written notice to City shall be sent to:
City of Oakley
Attn: City Manager
3231 Main Street
Oakley, CA 94561

10.11 Integration. This Agreement, including the Scope of Work, Compensation Schedule, Provisions Required for Public Works Contracts, and Insurance Requirements, attached hereto and incorporated herein as Exhibit A, B and C respectively, represents the entire and integrated agreement between City and Company and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Work
Exhibit B Compensation Schedule
Exhibit C Insurance Requirements

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.13 Authorized Signature. Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

City of Oakley, a municipal corporation

By: _____
Bryan H. Montgomery, City Manager

COMPANY

Shine House Cleaning Service

By: _____
Francisca M. Rojas, Owner

Attest:

Libby Vreonis, City Clerk

Approved as to Form:

William R. Galstan, Special Counsel

EXHIBIT A

SCOPE OF SERVICES

Company shall provide Facility Maintenance Services to the City. An example of the typical work to be performed by Company is listed below:

- Clean, dust, and wipe furniture
 - Clean and sanitize restrooms/bathrooms
 - Empty trash and recycling containers
 - Assist with setup of facilities for meetings, conferences, events, etc.
 - Sweep and mop hard surface floors and vacuum carpets
 - Clean and perform general maintenance of walls and furniture
 - Move furniture, equipment, supplies and tools on an incidental basis
 - Wash accessible interior and exterior windows and blinds
 - Follow instructions regarding the use of chemicals and supplies
 - Perform other related maintenance duties as may be assigned.
-

EXHIBIT B

COMPENSATION SCHEDULE

Company shall be paid seventeen dollars (\$17) per hour of services rendered. It is estimated that Company shall provide services up to two thousand two hundred (2,200) hours per City fiscal year. An increase to the hourly rate shall be considered in July of each year during the term of this Agreement; however, any increase above two and one-half percent (2.5%) over the previous year must be approved by the City Council.

Mileage reimbursement will be provided at the prevailing IRS rate.

EXHIBIT C

GENERAL PROVISIONS

1. **INDEPENDENT CONTRACTOR.** At all times during the term of this Agreement, Company shall be an Independent Contractor and shall not be an employee of City. City shall have the right to control Company only insofar as the results of Company's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Company accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City policy, rule, regulation or ordinance to the contrary, Company shall not qualify for or become entitled to any compensation, benefit or incident of employment.
 2. **TIME.** Company shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Company's obligations pursuant to this Agreement.
 3. **INSURANCE REQUIREMENTS.** Company shall procure and maintain for the duration of the agreement commercial liability insurance of a general aggregate of at least \$2,000,000 with no less than \$1,000,000 per occurrence; automobile liability limits no less than \$300,00 single limit per accident for bodily injury and \$100,000 single limit per accident for property damage. Company shall furnish City with certificates of insurance.
 4. **COMPANY NO AGENT.** Except as City may specify in writing, Company shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Company shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
 5. **ASSIGNMENT PROHIBITED.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
 6. **PERSONNEL.** Company shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Company shall, within two weeks of receiving notice from City of such desire of City, cause the removal of such person or persons.
 7. **STANDARD OF PERFORMANCE.** Company shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Company is engaged in the geographical area in which Company practices its profession. All instruments of service of whatsoever nature which Company delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Company's profession.
 8. **HOLD HARMLESS AND RESPONSIBILITY OF COMPANY.** Company shall take all responsibility
-

for the work, shall bear all losses and damages directly or indirectly resulting to him, to any subcontractor, to the City, to City officers and employees, or to parties designated by the City, on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes predicated on active or passive negligence of the Company or of any subcontractor. Company shall indemnify, defend and hold harmless the City, its officers, officials, directors, employees and agents from and against any or all loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the performance of the work. This paragraph shall not be construed to exempt the City, its employees and officers from its own fraud, willful injury or violation of law whether willful or negligent. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this agreement is not a construction contract. By execution of this Agreement, Company acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

Approval of the insurance contracts does not relieve the Company or subcontractor from liability under this paragraph.

9. **DOCUMENTS.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Company pursuant to this Agreement shall become the property of City upon completion of the work to be performed hereunder or upon termination of the Agreement.
 10. **COMPLIANCE WITH APPLICABLE LAWS.** Company shall comply with all laws applicable to the performance of the work hereunder, including, but not limited to, laws prohibiting discrimination based on race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.
 11. **AMENDMENTS.** This Agreement may be amended or modified only by a written agreement signed by all parties.
 12. **VALIDITY.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
 13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California and any suit or action by either party shall be brought in the County of Contra Costa California.
 14. **ATTORNEYS FEES.** If a party brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. Such fees may be set by the court in the same action or in a separate action brought for that purpose.
 15. **NO-WAIVER.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
 16. **SURVIVAL.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Company survive the termination of this Agreement.
-

17. **CONFLICT OF INTEREST.** Company may serve other clients, but none who are active within the corporate limits of city or who conduct business that would place Company in a "conflict of interest" as that term is defined in the Political Reform Act, codified at California Government Code §81000 et seq.
 18. **SOLICITATION.** Company agrees not to solicit business at any meeting, focus group or interview related to this Agreement, either orally or through any written materials.
-