

**MASTER AGREEMENT BETWEEN CITY OF OAKLAND
AND EAST BAY ZOOLOGICAL SOCIETY
FOR THE OAKLAND ZOO PROJECTS**

This Agreement is made and entered into this 7th day of March 2000 by and between the City of Oakland, (hereinafter called "CITY") and East Bay Zoological Society, a California charitable nonprofit corporation, (hereinafter called "CONTRACTOR").

WITNESSETH

WHEREAS, the CITY and CONTRACTOR desire to install various improvements at the Oakland Zoo; and

WHEREAS, the installation of these various improvements at the Oakland Zoo (hereinafter called PROJECT"), would benefit the CITY and the Oakland community at large; and

WHEREAS, the CITY, by City Council resolution, will provide Five Million One Hundred Ninety Thousand Dollars (\$5,190,000) Measure K Series 2000D funds for the provision of planning, design, construction, and project management services to complete the PROJECT; and

WHEREAS, the CITY desires to retain CONTRACTOR to provide planning, design, construction and project management services to complete the PROJECT;

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements herein set forth, the parties do hereby agree as follows:

1. SCOPE OF SERVICES

CONTRACTOR shall:

- A. Develop plans and specifications, subject to prior review by CITY, for the construction of the PROJECT, including but not limited to:
 - 1) Facility improvements (renovation of the front entrance, children's zoo, introduction of new signage, Environmental Education Center additions, new restrooms to serve the lower park and ADA upgrades to ride area restrooms, upgraded children's playground, Children's Ride Area additions and renovations, renovations to the Snow Building
 - 2) Various animal exhibits (renovations to the elephant, tiger, giraffe, camel, squirrel monkey, and wallaroo exhibits; minor renovations to several small animal exhibits;)
 - 3) Development of concept plans for the California 1820 native animal and plant region. Concept plans to include development of the general theme, animal exhibit layout survey, visitor circulation, general landscape, civil engineering, visitor service and interpretive programming needs.
 - 4) Landscape Improvements (Restoration of Arroyo Viejo Creek and general landscape and irrigation improvements)

- 5) Public Art will be incorporated within the new zoo development according to the Zoo Art Master Plan.

A draft architectural rendering of the proposed restoration is attached hereto as Exhibit A and incorporated herein by reference. The plans and specifications shall be placed on file with the Life Enrichment Agency, Facilities, Planning and Development Unit (LEA, FPD) and incorporated by reference in this Agreement. Said plans and specifications shall be in conformance with all applicable federal, state and local laws and regulations. Construction is to be completed within the designated time of performance/term specified by this Agreement with funds provided through the Measure K, Series D Bond Issue.

- B. Request and select bids in accordance with City regulations including, but not limited to, the current adopted Standard Specifications for Public Works Construction and City of Oakland's Modifications thereto, for all work necessary to design and/or construct the PROJECT. In the current adopted Standard Specifications for Public Works Construction and said Modifications thereto, wherever the CITY is referenced in any capacity, the CITY shall be replaced by CONTRACTOR herein and the CONTRACTOR shall be responsible instead of the CITY.

CONTRACTOR shall tender to CITY a copy of all professional service and construction contracts for City's approval prior to execution.

The CITY's SLBE/LEP and Living Wage requirements shall apply in all work related to construction of the PROJECT.

- C. Manage and oversee all phases of the construction of the PROJECT.

2. PROGRESS REPORT

CONTRACTOR shall provide CITY at a minimum with quarterly written progress reports which will include financial information in the format specified by the CITY.

3. GENERAL PERFORMANCE

It is understood and agreed that CONTRACTOR will obtain services from individuals and/or companies licensed in the State of California to perform the work agreed to be performed under this Agreement and that CITY shall rely upon these special skills to do and perform this work in the most skillful manner. It is CONTRACTOR's responsibility to comply with all local, state, and federal laws, codes, and directives including, but not limited to, the California Environmental Quality Act (CEQA) and the Americans with Disabilities Act (ADA), in the performance of work related to this Agreement.

4. TIME OF PERFORMANCE

All work required pursuant to this Agreement shall commence upon receipt of written notice to proceed from the CITY and shall be complete prior to June 26, 2003. A project is complete when CONTRACTOR certifies that the PROJECT is complete and the Director of the City's Public Works Agency accepts and files CONTRACTOR's Notice of Completion with the Alameda County Recorder and when a fiscal project audit is submitted to and

approved by the City. The development of the property must be open to public use within three years from the date of this Agreement.

No later than sixty days after the completion of construction and no later than sixty days before the expiration date of this master agreement the non-profit organization shall submit to the City a statement that the project is complete and a final Payment Request.

5. COMPENSATION AND METHOD OF PAYMENT

A. Maximum Compensation

The total compensation for eligible and actual costs in accordance with this Agreement and the Budget, attached hereto as Exhibit B, and specifically made a part hereof, shall not exceed Five Million One Hundred Ninety Thousand Dollars (\$5,190,000) total. Any costs above this amount necessary for the completion of the work to be performed under this Agreement shall be the responsibility of the CONTRACTOR. Eligible costs include the general development costs of plans and specifications by CONTRACTOR, construction costs, project management costs and administrative costs related to the project execution. The administrative costs not directly related to preparing plans and performing the construction cannot exceed 15% of the total Measure K, Series 2000D funds.

Any requested modification to the line items of the Budget attached as Exhibit B shall be reviewed by the CITY. CONTRACTOR may exceed or reduce the budgeted amount for each item in the budget, provided that the total contract amount is not exceeded. Any of the cost categories shown in the Budget may be exceeded by twenty percent (20%) of the indicated figure, provided that the total approved amount of allowable costs is not exceeded and prior written approval of the City is obtained. Budget modifications shall not alter:

- (1) The basic scope of services required to be performed under this Agreement;
- (2) The time period for the services to be performed under this Agreement; and
- (3) The total amount of the authorized budget of this Agreement (see Exhibit B).

In the event that, following bidding of the PROJECT, it is determined that the Measure K, Series 2000D funds provided by the City herein will not be sufficient to cover completion of the PROJECT as described in the Scope of Services, CITY agrees to meet and confer with CONTRACTOR regarding modification of the Scope of Services, however CITY is not obligated to fund expenditures beyond original PROJECT funding.

In the event of the PROJECT funding exceeds the PROJECT costs, the balance of funding shall be applied to appropriate Measure K, Series 2000D expenditures such as retirement of the Measure K bond debt.

B. Method of Payment

An initial payment of \$519,000 for estimated expenses to be used for the CONTRACTOR's start-up costs shall be advanced by CITY from Measure K Series

2000D funds upon execution of this Agreement. This amount shall not exceed ten percent (10%) of the total contract amount to be awarded for the PROJECT.

CONTRACTOR shall document all uses of the funds and present such documentation to the CITY for approval. Subsequent to the initial advance payment, CONTRACTOR shall be directly paid through requisitions supported by detailed documentation that is reasonably sufficient to support payment as determined by CITY. The check issued to CONTRACTOR will be written to both CONTRACTOR and any subcontractor, vendor, or any other person performing work on the PROJECT, in cases where reimbursement or payment is involved.

Required requisitions and reports must be submitted to LEA FPD staff for review on or before the tenth (10th) working day of the month. LEA FPD staff will review requisitions and required supporting documents for accuracy and compliance with bond covenants prior to submitting them to CITY for payment. CONTRACTOR's failure to comply with these requirements will cause delay in payment and may result in termination of the Agreement. The LEA FPD review of the CONTRACTOR's requisitions do not affirm that CONTRACTOR's expenditures are eligible.

On construction related items, the amount requested by the CONTRACTOR for payment on invoices on behalf of all contractors, subcontractors, vendors, or any other persons performing work on this PROJECT, shall reflect a 10% reduction for a retention amount. The retention amount does not apply to professional services or the purchase of supplies or equipment. The 10% retention will be paid by CITY when PROJECT is completed pursuant to CITY regulations for public works.

CONTRACTOR'S failure to comply with these requirements will cause a delay in payment and could result in termination of the Agreement. All authorized obligations incurred in the performance of the Agreement must be reported to CITY within sixty (60) days following the termination of the Agreement. No claims submitted after the 60-day period will be recognized as binding upon CITY for payment. Any obligations and/or debts incurred by CONTRACTOR and not reported to CITY within the 60-day period become the sole liability of CONTRACTOR and CITY is relieved of any and all responsibilities.

6. CONTRACTOR'S FINANCIAL CONTRIBUTION

CONTRACTOR acknowledges that the amount of payment by CITY under this Agreement may not pay for all of the services which CONTRACTOR has agreed to perform. CONTRACTOR is not obliged to, but may elect to, raise funds and obtain volunteer or other inkind monies to complete the renovation as described in Scope of Services. In the event CONTRACTOR elects to do so, it is understood that CITY is not obliged to provide assistance.

7. WORKING FACILITIES

CONTRACTOR shall not be provided CITY working facilities.

8. PREPARATION OF DOCUMENTS AND OWNERSHIP

It is hereby understood that any and all documents pertaining to PROJECT, including applicable "as built" drawings, will be created with the highest professional quality in accordance with generally accepted industry standards and shall be properly produced to give good reproductions. All development documents and drawings shall remain the property of CITY and shall be delivered by CONTRACTOR to CITY promptly at CITY's request or at the termination of this Agreement, whichever is earlier.

CONTRACTOR shall execute appropriate documents and drawings to assign to CITY the copyright to works created pursuant to this Agreement.

9. FINANCIAL REQUIREMENTS

CONTRACTOR shall be accountable to CITY for all funds requested by and released to CONTRACTOR pursuant to this Agreement and the disbursement thereof. CONTRACTOR shall maintain a full set of books on a double entry basis in accordance with generally accepted accounting principles, procedures, and regulations as deemed necessary by the CITY. Such records shall be properly maintained by qualified personnel and in a timely manner. All financial reports and schedules shall be prepared in accordance with generally accepted accounting principles and in accordance with applicable City requirements.

The LEA FPD's review and submission of CONTRACTOR's requisition for payment does not relieve CONTRACTOR of performance of these financial requirements.

10. INDEPENDENT CONTRACTOR

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in Exhibit A (theatre only).

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed.

c. Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

g. Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

11. PROPRITARY OR CONFIDENTIAL INFORMATION OF THE CITY

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

12. OWNERSHIP OF RESULTS

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

13. PREVAILING WAGES

CONTRACTOR shall comply with CITY's prevailing wage requirements, as set forth in Resolution No. 57103, for wages paid to laborers and mechanics on public works. CONTRACTOR shall insert similar provisions in all agreements with contractors for work covered by this Agreement and require that all of its contractors pay prevailing wages.

14. CONSTRUCTION DOCUMENTS

CONTRACTOR shall submit plans and specifications to CITY for review at the following phases:

- A. End of schematic design phase.
- B. 50% completion of construction documents.
- C. 95% completion of construction documents.
- D. Prior to the solicitation of Notice Inviting Bids and/or public distribution and advertisement for bids for the construction work.
- E. As-built project drawing transparencies and as-built specifications shall be submitted upon completion of the project and prior to distribution of final payment.
- F. CITY's review does not relieve CONTRACTOR's obligation to perform PROJECT work in accordance with all regulations, codes and terms of this Agreement.

15. PERFORMANCE AND PAYMENT BONDS

CONTRACTOR shall incorporate, or cause to be incorporated, in all agreements between the CONTRACTOR and CONTRACTOR's contractors and subcontractors for work to be performed under this Agreement, a provision requiring each and every subcontractor, at every tier, to provide performance and payment bonds each in the amount of one-half of the total contract price therein.

16. CITY AS THIRD-PARTY BENEFICIARY

CONTRACTOR shall incorporate, or cause to be incorporated, in all agreements between the CONTRACTOR and all contractors, for work to be performed under this Agreement, a provision that CITY is a third-party beneficiary of any agreement between the CONTRACTOR and any contractors, and that CITY, in said agreement between CONTRACTOR and any contractor, has all of the rights that CONTRACTOR has.

17. TERMINATION

CITY may terminate this Agreement immediately for cause, and without cause, upon thirty (30) days written notice of discontinuance and termination of said Agreement. Such notice shall be made in accordance with the "Notices" section of this Agreement.

18. ABANDONMENT OF PROJECT

CITY shall have the right to abandon or indefinitely postpone PROJECT or the services for any or all of PROJECT at any time. In such event, CITY shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, the CONTRACTOR shall have the right to expend reasonable additional time to assemble work in progress for the purpose of proper filing and closing of the job. Prior to expending said time, CONTRACTOR shall present to CITY a complete report of said proposed job closure and its costs, and the CITY may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by CITY, together with any other charges outstanding at the time of termination, shall be payable by CITY within thirty (30) days following submission of a final statement by CONTRACTOR.

Should the project or any portion thereof be abandoned, CITY shall pay the CONTRACTOR for all services performed theretofore in accordance with the terms of this Agreement.

19. CITY STAFF CHARGES

To ensure work meets this Agreement's requirements, it may be necessary for CITY staff to extensively monitor, intervene, or rectify work that is non-compliant with this Agreement. In such event, staff charges may be applied against CONTRACTOR's Measure K, Series 2000D funding. Staff charges may affect CONTRACTOR's 15% limit on Measure K, Series 2000D administrative expenditures. CONTRACTOR will be notified in writing ten (10) working days prior to the start of chargeable CITY staff work. The notification will include the estimated amount of charges and time to complete the staff work.

In the event CONTRACTOR requests CITY staff services, CONTRACTOR should submit a request to the LEA FPD in writing. A fee for the requested services will be provided within thirty (30) calendar days of the request. The fee will be applied against PROJECT funds.

20. AGENTS/BROKERS

CONTRACTOR warrants that CONTRACTOR has not employed or retained any subcontractor, agent, company, or person other than bona fide, full-time employees of CONTRACTOR working solely for CONTRACTOR to solicit or secure this Agreement, and that CONTRACTOR has not paid or agreed to pay any broker, agent, company or persons other than bona fide employees any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, or gift.

21. CONFLICT OF INTEREST

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the

United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.

- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents; to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090, et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$250 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100, et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700, et seq.).
- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that,

as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the form as that set forth in this section.

b. No Waiver

Nothing herein is intended to, nor does waive, any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal and state law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation. (Mark and Dan will work on this section).

22. EQUAL EMPLOYMENT PRACTICES

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice

in conspicuous places available to employees and applicants for employment.

23. LOCAL, SMALL BUSINEES ENTERPRISE PROGRAM (LSBE)

- a. For contracts exceeding \$50,000, Contractors utilizing subcontractors shall comply with the LBE/SLBE goals or demonstrate compliance with all good faith effort requirements of the City's Professional Services Contract Program. Additionally, opportunities for training and employment shall be given to residents of the City of Oakland.
- b. Contractor shall submit information on forms supplied by the City concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, as reasonably requested by the City.
- c. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- d. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Manager will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of race, ethnicity, national origin, gender, religion, sexual orientation, or disability, and make reports quarterly, or as requested, to the City.
- e. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

24. LIVING WAGE REQUIREMENTS

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Exhibit C and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that Contractor provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$8.30 with health benefits or \$9.55 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

25. AUDIT AND INSPECTIONS

CONTRACTOR shall permit, at any time and as often as CITY deems necessary, CITY and its authorized representatives to have access to CONTRACTOR's books, records, accounts

and any and all data relevant to this Agreement, for the purpose of making an audit or examination for a period of four years following the fiscal year of the last expenditure under this Agreement. CONTRACTOR shall permit and facilitate observation and inspection of the work and records at CONTRACTOR's principal office and job site by CITY, its employees, agents, public authorities and other designees, during reasonable business hours. CONTRACTOR acknowledges that with funds from a public bond issue, all records related to expenditures are subject to public review.

CONTRACTOR shall submit a final fiscal audit of eligible bond funds performed by an independent certified public accountant utilizing generally accepted accounting principals.

26. INDEMNIFICATION

CONTRACTOR agrees to save, indemnify, defend and hold harmless, the CONTRACTOR, CITY, its Councilmembers, directors, officers, agents, and employees from any and all claims, losses and expenses (including reasonable attorney's fees) or liability on account of damage of property or injury to or death of person accruing or resulting to any and all contractors, subcontractors, materialmen, laborer, and any other person, firm or corporation furnishing or supplying work, services, material, or supplies in connection with the negligent performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged in the negligent performance of this Agreement.

27. INSURANCE

CONTRACTOR shall procure and keep in force for the length of time specified in the following sections, at subcontractor's own cost and expense, the following policies of insurance with companies doing business in California and which are acceptable to CITY. CONTRACTOR upon request shall provide CITY with copies of all insurance policies.

CONTRACTOR shall, "pending acceptance" of insurance, supply and furnish CITY with certificates showing such insurance policies are in force with the written undertaking of each insurer to give CITY thirty (30) days prior written notice of cancellation, termination or material change of such insurance coverage. The insurance shall at a minimum include:

- A. Workers' Compensation insurance as required by the laws of the State of California during the term of this Agreement. The policy may include Employee Liability coverage with limits not less than \$1,000,000. Each subcontractor and/or sub-subcontractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Each subcontractor and/or sub-subcontractor shall comply with the provisions of section 3700 of the Labor Code before commencing the performance of the work under this Agreement.
- B. Commercial General Liability insurance, including but not limited to, Personal Injury, Broad Form Property Damage, Contractual (as needed), Products and Completed Operations or Owners and subcontractor Protective Liability. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof. The policy shall be enforced to include the following:

- 1) The CITY, its Councilmembers, directors, officers, agents and employees as additional insureds.
 - 2) The coverage afforded on behalf of the CITY shall be primary insurance and any other insurance available to the CITY under any other policies shall be excess over the insurance required hereby.
 - 3) Limits of liability:

Bodily Injury	-	\$500,000 minimum
Property Damage	-	\$250,000 minimum
Combined Single Limited		
Per Claim or Occurrence	-	\$500,000 minimum
Personal Injury	-	\$500,000 minimum
 - 4) If the policy is a "claims made" type policy, then the following should be included as endorsements:
 - a) The retroactive date shall be the effective date of this Agreement or a prior date.
 - b) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- C. CONTRACTOR shall obtain insurance coverage prior to beginning any work. Certificates of Insurance are attached to this Agreement and incorporated herein as Exhibit D.
- D. Automobile liability insurance, including all owned, non-owned and hired automobiles with the following minimum Bodily Injury and Property Damage - \$500,000 Combined Single Limit. The policy shall be endorsed to include the following:
- The CITY, it Councilmembers, directors, officers, agents and employees, as additional insured as respects the use of owned, non-owned and hired automobiles by the contractors, subcontractors and/or sub-subcontractors, officers, employees and agents in the performance of this contract.
- E. CONTRACTOR shall require that any professional services subcontractors procure Errors and Omissions/Professional Services Liability insurance in an amount to be approved by CITY.
- F. Notification of cancellation, which at a minimum requires insurer's notification of the CITY in writing within thirty (30) days of the expiration of any "claims made" insurance, General Liability or Errors and Omissions insurance policy, which is canceled or the contractor, subcontractor and/or sub-subcontractor does not renew. The contractor, subcontractor and/or sub-subcontractor further agrees to comply with all the policy terms and conditions, obtain a timely quote for the extended reporting or discovery period and promptly pay the full premium required to purchase the required extended reporting or discovery periods as required by this Agreement.

28. CITY'S ASSUMPTION OF INSURANCE COSTS

In the case of the breach of any of the insurance provisions of this Agreement, CITY may, at CITY's option, procure and maintain at the expense of CONTRACTOR, such liability and worker's compensation insurance in the name of CONTRACTOR as CITY may deem proper, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to CONTRACTOR under this Agreement.

29. POLITICAL PROHIBITION

Monies paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before Federal, State or local government.

30. RELIGIOUS PROHIBITION

There shall be no religious worship, instruction, or proselytization as part of, or in connection with, the performance of this Agreement.

31. CONFLICT OF INTEREST

The following protections against conflict of interest will be upheld:

- A. CONTRACTOR certifies that no member of, or delegate to, the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- B. CONTRACTOR certifies that no member, officer, or employee of CITY or its designees or agents, and no other public official of CITY who exercises any functions or responsibilities with respect to the programs or projects covered by the Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- C. CONTRACTOR certifies that no one who has any financial interest in this Agreement or receives compensation for services from CONTRACTOR is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, CITY, City Manager, or the head of the department to which these services are to be provided pursuant to this Agreement.
- D. CONTRACTOR shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interests pursuant to the purposes of this section.

32. ASSIGNMENT

CONTRACTOR shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, entity or entities whatsoever without the prior written consent of CITY and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

representing CONTRACTOR in all communications with CITY and/or others designated by the City Manager: Joel Parrott .

38. TAXES

CONTRACTOR shall provide to CITY the CONTRACTOR's Tax Identification Number and agree to promptly pay all duly imposed taxes, including but not limited to, any payroll taxes and business license taxes.

39. SIGNS AND INTERPRETIVE AIDS

At the initiation of PROJECT construction, at least one temporary 4' x 6' sign acknowledging Measure I bond assistance shall be located on or near the project site. This sign may indicate the percentage and dollar amount financed by Measure K, Series 2000D and non-Measure K, Series 2000D funds. PROJECT signs shall remain installed until the completion of the Measure I project. The costs of the required project sign are an allowable project expense for Measure I funding. LEA FPD staff shall provide assistance in developing the temporary sign display information.

40. MODIFICATION

Any modification of this Agreement will be effective only if it is in a writing signed by all the parties to this Agreement.

41. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

42. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

43. APPROVAL AND CONDITION PRECEDENT

The passage by the Oakland City Council of a resolution approving this Agreement is a condition precedent to this Agreement.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CONTRACTOR:



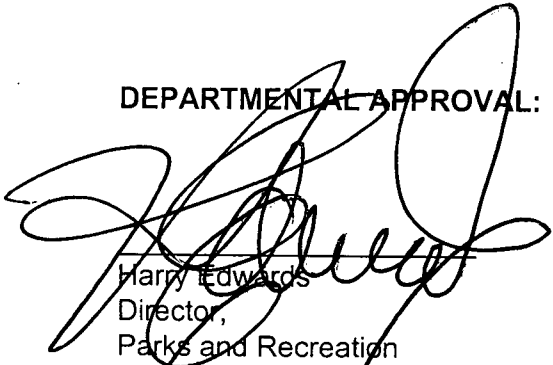
East Bay Zoological Society

94-1687847
Tax Identification Number

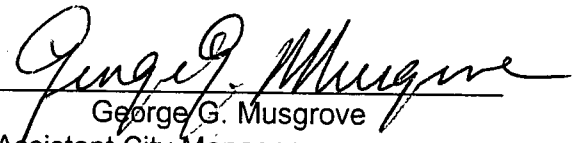
3209350
Business License Number

DEPARTMENTAL APPROVAL:

**THE CITY OF OAKLAND,
A Municipal Corporation**

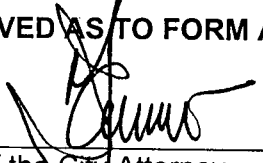


Harry Edwards
Director,
Parks and Recreation



George G. Musgrove
Assistant City Manager

APPROVED AS TO FORM AND LEGALITY:



Office of the City Attorney

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Revised February 2, 2001