




Agenda Date: 06/10/2014
Agenda Item: 5.1

STAFF REPORT

Date: Tuesday, June 10, 2014
To: Bryan H. Montgomery, City Manager
From: Kevin Rohani, P.E. Public Works Director/ City Engineer

Approved and Forwarded to City Council:


Bryan H. Montgomery, City Manager

SUBJECT: Award of Construction Contract for the CIP 150 – Civic Center Amphitheater Project

Background and Analysis

The City's adopted FY 2013/14 Capital Improvement Program (CIP) Budget designates funding for various infrastructure repair and replacement projects. This is consistent with the City's goals to improve the quality of the City's public infrastructure and to enhance the quality of life for our residents.

The Civic Center Amphitheater project will construct an outdoor amphitheater style seating, stage and stage cover, a restroom/snack shack building, landscaping, irrigation, and lighting. The construction needs to be completed by September so the facility is ready for service for the City fall festivals. The pre-fabricated restroom/snack shack building and the cover for the stage have been ordered by the City because they are long lead time items. They are scheduled to be delivered to the project site in the coming weeks for installation by the contractor as part of this project. This approach would prevent delays in the construction of the project.

The funding for this project is primarily from the East Bay Regional Park District Measure WW Grant of \$405,000. Staff has been working over the past months on the design and development of this project. City Council has also been involved in the design process by providing constructive input and comments which have been incorporated into the final design. The overall goal has been to design the project that best fulfills the needs of the community as a major feature for downtown Oakley while keeping the overall cost low.

In order to accommodate the project budget and funding sources, the landscaping and irrigation component of this project was placed as an alternative bid item. This approach gives Staff the option to review this specific bid item and determine if the unit cost for landscaping and irrigation is reasonable, and if so, the entire contract would be awarded. If it is determined that this bid item is too costly, the City Council could decide to have the work done separately by another contractor.

The due date for bids is after the date of this report and a summary will be emailed to the Council and presented at the Council Meeting. A recommendation of award of the base bid and alternative bid item will be presented at the Council Meeting.

Fiscal Impact

Approval of this item will obligate the WWV Grant Fund and Main Street Fund for the construction agreement.

Staff Recommendation

At the May 13, 2014, City Council meeting, the Council approved plans and specification for this project and authorized Staff to advertise the project for bid.

On June 5, 2014 bids will have been received for this project. Staff will review the bids received and present a recommendation for the lowest responsible entity that is most responsive to the City's formal bid process.

Staff recommends that the City Council adopt the resolution approving the construction agreement and authorize the City Manager to execute said agreement.

Attachments

- 1) Draft Resolution
- 2) Draft Agreement

RESOLUTION NO. __-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
APPROVING AN AGREEMENT WITH XXXXXXXXX FOR THE
CONSTRUCTION OF THE CIP 150 – CIVIC CENTER AMPHITHEATER
PROJECT**

WHEREAS, Garth Ruffner, Landscape Architect, prepared the plans, specifications, and estimates for the construction of the Civic Center Amphitheater Project which includes the construction of an amphitheater style seating, stage and cover, lighting and irrigation and landscaping, and other related work; and

WHEREAS, the plans, specifications and special provisions were publicly advertised for bidding, with the bid period closing at 2:00 P.M. on Thursday, June 5, 2014; and

WHEREAS, xxxx (X) bids were received prior to the close of the bidding process; and

WHEREAS, XXXXXXXX submitted the lowest responsible bid for a total cost of \$XXXXXX.00 for the base bid work. Their bid included a price of \$XXXXXX for the alternate work. The total bid for the base project and alternate was \$XXXXX;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oakley that the Agreement with XXXXXXXXX for the construction of the CIP 150 – Civic Center Amphitheater Project for an amount not to exceed \$XXXXXX.00 is approved, and the City Manager is authorized to execute said Agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 10th of June, 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

**AGREEMENT
CIVIC CENTER AMPHITHEATER PROJECT AGREEMENT
CIP NO. 150**

THIS AGREEMENT, dated June 10, 2014, is by and between the CITY OF OAKLEY, a municipal corporation "CITY"), and _____ ("CONTRACTOR").

The parties hereto mutually agree to the terms and conditions set forth herein.

1.01 CONTRACT DOCUMENTS.

Each of the items hereinafter referred to are incorporated herein by this reference as if set forth in full herein.

Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles, and headings contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretations of the provisions to which they refer.

The Contract Documents, sometimes also referred to as "the Contract," consists of this agreement, the special provisions, the project plans, the proposal submitted by the Contractor to whom the Contract is awarded, the Standard Specification, the Standard Plans, the Labor and Material and Performance Bonds, the current general prevailing wage rate, the labor surcharge and equipment rental rates and the notice to contractors, the Insurance Requirements, and any other such data and all versions thereof prepared by City pursuant to Contract, and any modifications of any of the foregoing in the form of Addenda or executed Change Order or otherwise effected in accordance with the terms of the Contract, the surety bonds, bid bond, and Contractor's list of subcontractors. This is a public works contract pursuant to the provisions of the California Public Contract Code and other California statutes.

1.02 DEFINITIONS.

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications and modified by the special provisions shall have the same meaning and intent in this Agreement.

1.03 AGREEMENT CONTROLS.

In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail.

1.04 SCOPE OF CONTRACT.

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, and material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of the City, all the work called for, and in the manner designated in, and in strict conformity with the Contract Documents for the project entitled: **CIVIC CENTER AMPHITHEATER PROJECT AGREEMENT**

1.05 CONTRACT AMOUNT AND PAYMENTS.

City agrees to pay, and Contractor agrees to accept, in full payment for the above work, the sum of _____ **DOLLARS** **AND** _____ **CENTS (\$_____)**, which sum is to be paid according to the schedule and in the manner set forth herein and subject to additions, deductions, and withholding as provided in the Contract Documents. When it is provided in the Notice to Bidders, Instructions to Bidders, or Proposal Form that Contractor is to be paid on the basis of the unit prices shown in his bid, instead of a lump sum price, the Contractor agrees to accept, in full payment for the above work, the sum computed in accordance with the actual amount of each item of work performed or material furnished, at the unit price which Contractor bid for each such item in his Proposal Form, said unit price to be determined as provided in the Standard Specifications and Special Provisions.

1.06 PROGRESS AND FINAL PAYMENTS.

Subject to the terms and conditions of the Contract Documents, City shall cause payments to be made upon demand of Contractor in the manner set forth in the Standard Specifications.

1.07 RETENTION OF SUMS CHARGED AGAINST CONTRACTOR.

When, under the provisions of this Contract, City shall charge any sum of money against Contractor, City shall deduct and retain the amount of such charge from the amount of the next succeeding progress estimate, or from any other moneys due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges against him, City shall have the right to recover the balance from Contractor or its sureties.

1.08 COMMENCEMENT AND PROSECUTION OF WORK.

The Contractor shall begin work within TEN (10) working days of the date of the Notice to Proceed and shall diligently prosecute the same to completion before the expiration of **FORTY-FIVE (45) WORKING DAYS**, after the date of Notice to Proceed. The phrase "commence the work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrication, erection, or installation of the work. Said Notice to Proceed shall be issued following execution of the Agreement and the filing by Contractor of the required bonds and proof of insurance. The continuous prosecution of work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

1.09 TIME OF COMPLETION.

The entire work shall be brought to completion in the manner provided for in the Contract Documents on or before the **FORTY-FIFTH (45th)** working day, (hereinafter called the ("Completion Date")) from and after the receipt by Contractor of the Notice to Proceed unless extensions of time are granted in accordance with the Contract Documents.

1.10 PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK.

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made.

1.11 ACCEPTANCE NOT RELEASE.

Contractor shall correct immediately any defective or imperfect work which may be discovered before final acceptance of the entire work. Any unsatisfactory materials shall be rejected, notwithstanding that they may have been overlooked by the proper inspector. The inspection of the work, or any part thereof, shall not relieve Contractor of any of his obligations to perform satisfactory work as herein prescribed.

Failure or neglect on the part of the City or any of its authorized agents to condemn or reject bad or inferior work or materials shall not be construed to imply an acceptance of such work or materials if such becomes evident at any time prior to final acceptance of the entire work or all materials, nor shall such failure be construed as barring City at any subsequent time from recovering damages or of such a sum of money as may be required to build anew all portions of the work in which fraud was practiced or improper materials used whenever City may discover the same.

1.12 PAYMENT OF UNDISPUTED CONTRACT AMOUNTS.

Payment of undisputed contract progress payments or amounts is contingent upon Contractor furnishing the City with a release of all claims against the City arising by virtue of the contract related to those amounts. The City shall pay interest at the legal rate to the Contractor for any progress payment request not paid within thirty (30) days of submission when the validity of the request is not disputed and when the request has been properly submitted. Any payment request determined by City not to be a proper request shall be returned to Contractor as soon as practicable, but not later than seven (7) days after receipt. A request returned pursuant to this paragraph shall be accompanied by a writing setting forth the reasons why the payment request is not proper.

1.13 CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART.

Without limitation of Paragraph 1.19 whatsoever, the City of Oakley shall have the right at any time to enter upon the work and perform work not covered by this Contract, or to occupy and use a portion of the work, prior to the date of the final acceptance of the work as a whole, without in any way relieving Contractor of any obligations under this Contract.

Such use or occupation of the work shall not be construed as an acceptance of any portion of the work under this Contract, nor shall it affect the dates and times when payments shall become due nor prejudice City's right, guarantees, or sureties.

1.14 NO WAIVER OF REMEDIES.

Neither the inspection by City or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the work by City, nor any extensions of time, nor any position taken by City or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to City or

any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in this Agreement 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 in any case have.

1.15 DETERMINATION OF DAMAGES.

The actual fact of the occurrence of damages and the actual amount of the damages which City would suffer if the work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations, and from the nature of the project, it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Project, and in addition expenses of prolonged employment of an architectural and engineering staff; costs of administration, inspection, and supervision; and the loss suffered by the public within the City of Oakley by reasons of the delay in the completion of the project to serve the public at the earliest possible time. Accordingly, the parties hereto agree, and by execution of this Agreement, Contractor acknowledges that he understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire work within the times specified.

1.16 LIQUIDATED DAMAGES.

The amount of the liquidated damages to be paid by Contractor to City for failure to complete the entire work by the Completion Date (as extended, if applicable) will be **One Thousand Dollars (\$1,000.00)** for each calendar day, continuing to the time at which the work is completed. Such amount is the actual cash value agreed upon as the loss to City resulting from Contractor's default.

1.17 PAYMENT OF DAMAGES.

In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments which would otherwise be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or otherwise. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor and his sureties shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as hereinbefore specified shall in any manner be construed to constitute a waiver of any right to liquidated damages or any right to any such sum.

1.18 INDEMNITY AND HOLD HARMLESS.

Contractor shall assume the defense of, and indemnify and hold harmless, the City, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description, including but not limited to loss of use, loss of profits or loss of goodwill arising in any manner from the work, to which they may be subjected or put, by reason of, or resulting from, the performance of the

work, provided that such action, damage, claim, loss, or expense is attributable to bodily injury, sickness, disease or death, or injury to, or destruction of property, whether upon or off the work, including the loss of use thereof, and is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, and anyone directly or indirectly employed by either of them, or anyone for whose acts of them may be liable, whether or not it is caused in part by a party indemnified hereunder, except if attributable to the City's own active negligence.

1.19 CONTRACTOR SHALL ASSUME RISKS.

Until the completion and final acceptance by City of all work under this Contract, the work shall be under Contractor's responsibility, care, and charge, including any period of time work is suspended for any cause whatsoever. Contractor shall rebuild, repair, restore, and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the work, except as otherwise agreed. However, Contractor shall not be responsible for assuming responsibility for repairing or restoring damage caused by an Act of God as defined by Public Contract Code Sec. 7105 in excess of five (5%) percent of the total contract amount. It is specifically contemplated that the City, its officers, employees, and invitees, will occupy and use portions of the work prior to final acceptance. Such occupancy shall not relieve Contractor of responsibility provided herein nor exonerate any surety or insurer of Contractor save and except for items of routine maintenance and repair.

1.20 GENERAL LIABILITY OF CONTRACTOR.

Except as otherwise herein expressly agreed, Contractor shall do all the work and furnish all the labor, materials, tools, power and light, and appliances, necessary or proper for performing and completing the work herein required in the manner within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or duty of Contractor, and any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

1.21 RECYCLING REQUIREMENTS

Contractor agrees to comply with all City recycling requirements, and as set forth in the Oakley Municipal Code, including, but not limited to:

- a. Construction and Demolition. Contractor must contact a customer service representative (CSR) at Oakley Disposal Service, Inc. to arrange for service for any and all construction and demolition work to be performed as part of this project unless Contractor has been approved by the City as a "self-hauler" as defined in Oakley Municipal Code §4.20.308. The CSR will ask if the drop box contains recycle material and will direct the Contractor to drop the construction and demolition debris, including dirt and cement, to a permitted processing facility. The Contractor must indicate on their order form, by checking the applicable box, that they need documentation to comply with the Oakley Municipal Code. This documentation must be provided to the City within ten (10) days of receipt of said documentation by Contractor.
- b. Commercial Self-Haul. Business self-haul materials are accepted at various Oakley Disposal Service, Inc. local facilities for recycling and include, but are not limited to,

wood, inerts, metals, tires, greenwaste, plastics, cardboard, mattresses, foam padding, propane tanks, e-waste and appliances. Contractor agrees to drop any and all business self-haul materials at a site designated on the website www.cccounty.us/depart/cd/recycle/.

- c. Road Maintenance and Construction Projects. Contractor agrees to recycle greenwaste, asphalt, concrete and metal from any and all road maintenance and construction projects at Oakley Disposal Service, Inc. designated locations.
- d. Office Recyclables. If Contractor has an office, temporary office, or trailer within the City of Oakley, Contractor agrees to recycle all paper, cardboard, bottles, cans, and toner cartridges at Oakley Disposal Service, Inc. designated locations.
- e. Special Waste Materials. Contractor shall dispose of inert materials, including, but not limited to, concrete, asphalt and rubber, at Oakley Disposal Service, Inc. designated locations. Shingles and wood waste shall be diverted to the Recycling Center and Transfer Station (RCTS) located at 3700 Loveridge Road, Pittsburg, CA 94565. Scrap metal shall be dropped off at a large-scale scrap metal recycle facility operating within Contra Costa County which may be found at www.cccrecycle.org.
- f. Universal Waste. Contractor shall dispose of batteries, mercury containing devices and lamps, and certain consumer electronics at a recycling center designated by Oakley Disposal Service, Inc.

1.22 PREVAILING WAGE REQUIREMENTS.

All workers hired by Contractor, and all workers of subcontractors performing work for Contractor, must receive not less than the prevailing rate of per diem wages for work of a similar character in the locality in which City is located and be subject to the California prevailing wage laws, Labor Code Sec. 1720 et seq. The general rate of per diem wages for each craft, classification or type of worker are on file at the City's offices. Statutory provisions for penalties for failure to pay prevailing wages and/or the State wage and hour laws will be enforced. Contractor shall comply with State requirements relating to the retention, maintenance and inspection of certified payroll records. It shall also comply with State requirements regarding the employment of apprentices. Eight hours' labor constitutes a legal day's work. Contractor must secure payment of Workers Compensation Insurance as required by Labor Code Se. 1860 and 3700.

1.23 INSURANCE REQUIREMENTS.

Before beginning any work under this Agreement, Contractor 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 Contractor and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this Agreement and under forms and amounts of insurance satisfactory in all respects to the City as set forth in Exhibit A attached hereto and incorporated herein. Contractor shall maintain in full force and effect the insurance coverage in the forms and amounts specified in this Agreement throughout the term of this Agreement,

and until final completion and acceptance of the work by the City. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor 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 B.

1.24 VARIATION.

The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

1.25 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, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.

1.26 FAILURE TO MAINTAIN INSURANCE.

During the term of this Agreement, and until final completion and acceptance of the work by the City, the Contractor shall maintain in full force and effect insurance coverage in the forms and amounts specified in these Contract Documents and as described in the Insurance Requirements in Exhibit A. If, at any time during the performance of this Contract, Contractor fails to maintain any item of required insurance in full force and effect, Contractor shall immediately discontinue all work under the Contract and City will withhold all Contract Payments due or that become due until notice is received by City that such insurance has been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the City Manager.

1.27 NOTICE OF CLAIMS.

City shall notify Contractor within thirty (30) days of City's receipt of any third party claim related to this Contract.

1.28 EXTENSIONS OF TIME.

In the event City deems it necessary, in its sole discretion, to extend the time of completion of work to be done under this Contract beyond the required Completion Date herein specified, such extensions shall in no way release any guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provisions. By executing such bonds, the sureties shall be deemed to have expressly agreed to any such extension of time. The amount of time allowed in any extension of time shall be limited to the period of excusable delay as defined herein giving rise to the same as determined by City Engineer.

1.29 EXCUSABLE DELAYS.

For the purpose of these Contract Documents, the term "Excusable Delays" shall mean, and is limited to, delays caused directly by acts of God, acts of the public enemy, fires, riots, insurrections, epidemics, quarantine restrictions, strikes, lockouts, sit-downs, acts of a governmental agency, priorities or privileges established for the manufacture, assembly, or allotment of materials necessary in the work by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by City insofar as they necessarily require additional time in which to complete the work; the prevention by City of Contractor from commencing or prosecuting the work because of the acts of others, excepting Contractor's subcontractors; or the prevention of Contractor from commencing or prosecuting the work because of a City-wide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (1) any delay which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor; (2) any delay in the prosecution of parts of the work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other parts of the work, nor the completion of the whole work within the time specified; (3) any reasonable delay resulting from time required by City for review of plans and submittals required of Contractor and for the making of surveys, measurements and inspections; and (4) any delay arising from an interruption in the prosecution of the work on account of the reasonable interference from other Contractors employed by City, which does not necessarily prevent the completion of the work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by the City) but shall not under any circumstances increase the sum City is to pay Contractor as provided in these Contract Documents.

1.30 CONTRACTOR TO SERVE NOTICE OF DELAYS.

Whenever Contractor foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay which Contractor regards as an excusable delay, he shall notify the City Engineer in writing of the probability of such delay and its cause, in order that the City Engineer may take immediate steps to prevent if possible the occurrence or continuance of the delay, or if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the work are delayed thereby. Said notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth Contractor's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the work, the City Engineer, in estimating the amount due Contractor, will assume that any and all delays which may have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the City Engineer at the time of their occurrence and found by him to have been excusable. Contractor shall make no claim that any delay not called to the attention of the City Engineer at the time of its occurrence has been an excusable delay.

1.31 EXTENSION OF TIME - EXCUSABLE DELAY.

Should any delays occur which the City Engineer may consider excusable, as herein defined, Contractor shall, pursuant to his application, be allowed an extension of time

beyond the time herein set forth proportional to said delay or delays in which to complete this Contract; and, during an extension which may have been granted because of an excusable delay or delays, City shall not charge liquidated damages against Contractor for such delay.

1.32 EXTENSION OF TIME DOES NOT WAIVE CITY'S RIGHTS.

The granting of any extension of time on account of delays which in the judgment of the City Engineer are excusable delays shall in no way operate as a waiver on the part of City of its rights under this Contract excepting only the extension of the Completion Date.

1.33 NO PAYMENT FOR DELAYS.

No damages or compensation of any kind shall be paid to Contractor or any subcontractor because of delays in the progress of the work whether such delays qualify for extension of time under this Agreement or not.

1.34 CHANGES IN THE WORK.

Changes in the work made pursuant to changes issued in accordance with the Standard Specifications and extensions of time of completion made necessary by reason thereof (beyond the Completion Date) shall not in any way release any guarantee given by Contractor pursuant to the provisions of the Contract Documents, or the Contract let hereunder, nor shall such changes in the work relieve or release the sureties on bonds executed pursuant to the said provisions. By executing such bonds, the sureties shall be deemed to have expressly agreed to any such change in the work and to any extension of time made by reason thereof.

1.35 TERMINATION AFTER COMPLETION DATE.

In addition to any other rights it may have, City may terminate this Contract at any time after the Completion Date as adjusted by any extensions of time for excusable delays that may have been granted. Upon such termination Contractor shall not be entitled to receive any compensation for services rendered by him before or after such termination, and he shall be liable to City for liquidated damages for all periods of time beyond such termination date until the work is completed.

1.36 CONTRACTOR BANKRUPT.

If Contractor should commence any proceeding under the Bankruptcy Act, or if Contractor be adjudged bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the City Council may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Contractor and his surety according to the provisions of Section 1.32. Contractor's Surety shall have the right to complete the work by commencing thirty (30) days as specified in Section 1.32; and, in the event Contractor's Surety fails to commence work within thirty (30) days, City shall have the right to complete, or cause completion of the work, all as specified in Section 1.32.

1.37 DISPUTE RESOLUTION. The Contract Administrator is empowered to issue orders and instructions to Contractor to effectuate the performance of the work and to ensure that the work complies with this Agreement. If Contractor receives a written direction or order from the Contract Administrator that the Contractor believes is inappropriate or not within the

scope of work under this Agreement, the Contractor may appeal the Contract Administrator's order to the City Manager. Any such appeal must be filed within ten (10) business days after receipt of the contested order. The Contractor shall continue performing the work under the Agreement until the appeal is determined. In the event of any dispute between Contractor and the City, before either party may commence litigation to resolve such dispute, the matter shall be referred to nonbinding mediation. Each party shall bear its own costs and expenses for participation in the mediation, and each pay an equal share of the mediator's fees. In the event that the parties are unable among themselves to appoint a mutually satisfactory mediator, the matter shall be submitted to the Walnut Creek office of JAMS*ENDISPUTE and a panelist shall be assigned by the administrator of that office.

1.38 TERMINATION FOR BREACH OF CONTRACT.

If Contractor should abandon the work under this Contract, or if the Contract or any portion of the Contract should be sublet or assigned without the consent of the City Council, or if the City Engineer should be of the opinion that the conditions of the Contract in respect to the rate of progress of the work are not being fulfilled or any part thereof is unnecessarily delayed, or if Contractor should willfully violate or breach, or fail to execute in good faith, any of the terms or conditions of the Contract, or if Contractor should persistently refuse or fail to supply enough properly skilled labor or materials, or fail to make prompt payment to subcontractors for material or labor, or persistently disregard laws, ordinances, or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the City Council may give Contractor and his Surety written notification to immediately correct the situation or the Contract shall be terminated.

In the event that such notice is given, and, in the event such situation is not corrected, or satisfactory arrangement for correction is not made within ten (10) calendar days from the date of such notice, the Contract shall upon expiration of said ten (10) calendar days cease and terminate. In the event of any such termination, City shall immediately serve notice thereof upon the Surety and Contractor; and the Surety shall have the right to take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within thirty (30) days from the date of the mailing to such Surety of notice of termination, City may take over the work and prosecute the same to completion by Contract, or otherwise, for the account and at the expense of Contractor, and his Surety shall be liable to City for any excess cost occasioned City thereby, as hereinafter set forth.

In the event City completes the work, or causes the work to be completed, as aforesaid, no payment of any sum shall be made to Contractor until the work is complete. The cost of completing the work, including but not limited to, extra contract costs, the costs of City forces, extra costs of administration and management incurred by City, either direct or indirect, shall be deducted from any sum then due, or which becomes due, to Contractor from City. If no sum sufficient to pay the difference between sums due to Contractor and the cost of completing the work, and there is a sum remaining due to Contractor after City deducts the aforementioned costs of completing the work, then City shall thereupon pay such sum to Contractor and his Surety.

No act by City before the work is finally accepted, including but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, claims of liquidated damages, occupation or acceptance of any part of the work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach by Contractor shall be construed to be a

waiver, or to estop, City from acting pursuant to this paragraph upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Contract. The rights of City pursuant to this paragraph are cumulative and in addition to all other rights of City pursuant to this Agreement and at law or in equity.

1.39 SECURITY.

Contractor shall furnish security in a form approved by the City Engineer to guarantee faithful performance of the Contract and to secure payment of claims of laborers, mechanics, materialmen and other persons. Such security may be in the form of bonds issued by a California-admitted surety, cash deposit, irrevocable letter of credit, maintenance of account balance agreement, or other security approved by the City Engineer.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date set forth opposite their names.

Date: _____

CONTRACTOR:

Signature
(corporate officer if incorporated)

Name (Printed)

Title

Date: _____

Secondary Signature
(required if incorporated)

Name (Printed)

Title

Date: _____

CITY

City of Oakley, a municipal
corporation in the State of California

City Manager

ATTEST:

City Clerk

ORIGINAL APPROVED AS TO FORM:

City Attorney

GUARANTY

To the CITY OF OAKLEY, FOR CIVIC CENTER AMPHITHEATER PROJECT CIP NO. 150

The undersigned guarantees the construction and installation of the work included in this project.

Should any of the work prove defective, due to faulty workmanship, materials furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, all within one year after date on which this contract is accepted by the City or after relief from maintenance, whichever, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring said project, including the cost of any such equipment or materials replaced and repair said work completely without cost to the City so that said work will function successfully as originally contemplated.

The City shall have the unqualified option to make any needed replacements or repairs done by the undersigned. In the event the City elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the City. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees.

Signature of Bidder

EXHIBIT A

INSURANCE REQUIREMENTS

CONSTRUCTION CONTRACTS

Contractor shall procure and maintain for the duration of the contract, and for two years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit (i.e., \$10,000,000)
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance

(at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 forms if later revisions used).

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide notice will be provided to City in the event that the policy is terminated. Contractor shall immediately notify City of any insurance cancellation or termination and shall provide replacement insurance policy documentation to the City.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Worker's Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance

policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 10 10 01 and CG 20 37 10 01.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City reserves right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

EXHIBIT B
VERIFICATION OF INSURANCE

**APPLICABLE CITY OF OAKLEY
IMPERIAL (ENGLISH) UNITS-STANDARD PLANS
DATED: 2014**

The City of Oakley Standard Plan sheets applicable to this contract include, but are not limited to those indicated below.

SIGNING

SNS-1 to 3 Street Name Sign

GENERAL ROAD WORK- (Miscellaneous)

Std. Plan No. 1 Concrete Curb and Gutter
Std. Plan No. 2 Concrete Vertical Curb
Std. Plan No. 3 Concrete Rolled Curb
Std. Plan No. 4 Concrete Valley Gutter
Std. Plan No. 5 Concrete Sidewalk
Std. Plan No. 6 Concrete Driveway with Planter
Std. Plan No. 7 Concrete Driveway without Planter
Std. Plan No. 8 Concrete Driveway and Intersection Site Details
Std. Plan No. 9 Driveway Reconstruction
Std. Plan No. 10 Curb Ramp Case "E"
Std. Plan No. 11 Curb Ramp Case "C"
Std. Plan No. 12 Curb Ramp Case "CM"
Std. Plan No. 13 Curb Ramp Typical Locations
Std. Plan No. 14 Manhole, Catch Basin, Valve Box Adjustment
Std. Plan No. 15 Tree Planting Detail
Std. Plan No. 16 Tree Planting Specifications