



Office of the City Manager

CONSENT CALENDAR  
December 10, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Waiver of City Ordinance No. 7650-N.S. for Berkeley Tuolumne Camp Reconstruction Contracts

RECOMMENDATION

Adopt a Resolution authorizing a waiver of City Ordinance No. 7,650-N.S. (which adds Chapter 13.105 to the Berkeley Municipal Code to Adopt a Sanctuary Contracting Ordinance) for Berkeley Tuolumne Camp Reconstruction Project contracts.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with the recommended action. If the requested waiver is not granted, up to \$35 Million in Federal grant funding for the Project may be rescinded.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley Tuolumne Camp Reconstruction Project is partially funded by a Federal Emergency Management Agency (FEMA) Public Assistant Grant. To be eligible for this funding, all procurement activities must comply with federal regulations to maximize free and open competition. If the federal government determines that the City's procurement process for any particular Berkeley Tuolumne Camp Reconstruction Project contract is not compliant with federal regulations, it may rescind funding for all costs incurred under the non-compliant contract.

On May 14, 2019, the Council adopted Ordinance No. 7,650-N.S, which requires all public works, construction bids, requests for information, requests for proposals or any other solicitation issued by the City to include notice of the prohibition on use of City resources with any Person or Entity that provides the United States Immigration and Customs Enforcement, and any subdivision thereof, with any "Data Broker" or "Extreme Vetting" services, unless a waiver is granted.

The Berkeley Tuolumne Camp Reconstruction Project budget is \$60 Million. The City has received \$25 Million from its insurance provider to-date. The City's FEMA grant will cover eligible Project costs not paid for by insurance. At this time, the difference between the Project budget and insurance proceeds is \$35 Million.

City ordinance No. 7,650-N.S. allows for a waiver based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of the ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives.

Each of these factors is discussed below.

1. If the waiver is granted, Berkeley Tuolumne Camp contracts would not include notice of the prohibition in qualification, proposal, or bid solicitations. Once the preferred contractor is selected, however, they will be asked to voluntarily complete the "Sanctuary City Compliance Statement". As such, the intent and purpose of the ordinance will be applied to the maximum extent feasible while still complying with federal procurement guidelines. Through this voluntary process, it is possible that all contracts for the Berkeley Tuolumne Camp Project will be in full compliance with Ordinance No. 7650-N.S.

2. Rejection of a qualified contractor or vendor based solely on their inability to comply with Ordinance No. 7650-N.S. would be in clear violation of federal guidelines that require maximum free and open competition, and prohibit the placement of unreasonable requirements on firms in order to qualify them to do business (Code of Federal Regulations §200.319).

3. If the waiver is not granted, FEMA may rescind up to \$35 Million in grant funding.

#### BACKGROUND

Berkeley Tuolumne Camp, established in 1922, is a 30-acre property operated under a Special Use Permit with the USFS. The camp has served primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time, and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August of 2013, the Rim Fire destroyed Berkeley Tuolumne Camp (BTC) and in December was declared a federal disaster. The majority of structures at BTC were destroyed by the fire. The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City was also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to partially fund reconstruction.

The City has been working in partnership with the U.S. Forest Service (USFS), FEMA, Cal OES and Tuolumne County to stabilize and remove debris and hazardous trees from the site, to complete National Environmental Protection Act (NEPA) and California Environmental Quality Act (CEQA) compliance, to develop Project Plans and to acquire Project permits for the re-building of Berkeley Tuolumne Camp. The Project is currently in the final design stage, and is anticipated to be advertised for bidding in January 2020.

The total budget for the Berkeley Tuolumne Camp Project is \$60M. This cost will be covered largely by insurance, FEMA and state Public Assistance Grant funding, along with City funds approved by Resolution 67,889-N.S. (April 4, 2017). The City has received a total of \$25 Million to date from insurance. City staff is negotiating with insurance providers regarding additional cost recovery. FEMA and Cal OES will pay for the majority (93.25%) of eligible costs not covered by insurance proceeds. City staff currently project that the total FEMA grant at Project completion will be between \$6 Million to \$35 Million. On April 4, 2017, City Council allocated \$3.3M of City funds from the Catastrophic Reserve for the Project to cover the required local match (Resolution No. 67,889-N.S.).

#### ENVIRONMENTAL SUSTAINABILITY

The City approved the Project CEQA documents on January 22, 2019. The construction of the Berkeley Tuolumne Camp facilities will involve appropriate restoration of forest landscapes in order to achieve sustainable riverine and upland ecosystems that provide a broad range of benefits to humans and the ecosystem. All construction activities will implement Best Management Practices (BMPs) to encourage biodiversity, preserve resources, and maintain riparian and other natural habitats. Revegetation and reforestation activities will emphasize native vegetative cover and minimize exposed bare soil and erosion. This project will comply with the City's Climate Action Plan in the following ways: increased energy efficiency in public buildings, and providing a public resource for community outreach and empowerment.

#### RATIONALE FOR RECOMMENDATION

Up to \$35 Million in Project funding may be rescinded if no waiver is granted. The City does not have sufficient funds to allocated complete the Project without federal funding.

#### ALTERNATIVE ACTIONS CONSIDERED

None. The City cannot complete the Project without federal funding.

#### CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700  
Liza McNulty, Project Manager, PRW, 981-6437

#### Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

WAIVER OF ORDINANCE NO. 7,650-N.S. FOR BERKELEY TUOLUMNE CAMP  
CONTRACTS

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, in December, 2013, the City received a Federal Emergency Management Agency (FEMA) Public Assistance Grant for the reconstruction of Berkeley Tuolumne Camp; and

WHEREAS, rejection of a qualified contractor or vendor based solely on their inability to comply with Ordinance No. 7,650-N.S. would be in violation of federal guidelines that require maximum free and open competition, and prohibit the placement of unreasonable requirements on firms in order to qualify them to do business (Code of Federal Regulations §200.319); and

WHEREAS, if the waiver of Ordinance No. 7,650-N.S. is not granted, FEMA may rescind up to \$35 Million in grant funding for the Berkeley Tuolumne Camp Reconstruction Project; and

WHEREAS, if the waiver is granted, Berkeley Tuolumne Camp contracts would not include notice of the prohibition in qualification, proposal, or bid solicitations. Once the preferred contractor is selected, however, they will be asked to voluntarily complete the "Sanctuary City Compliance Statement". As such, the intent and purpose of the ordinance will be applied to the maximum extent feasible while still complying with federal procurement guidelines. Through this voluntary process, it is possible that all contracts for the Berkeley Tuolumne Camp Project will be in full compliance with Ordinance No. 7650-N.S.; and

WHEREAS, the City does not have sufficient funds allocated to complete the Berkeley Tuolumne Camp Project without federal funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Ordinance No. 7,650-N.S. is waived for Berkeley Tuolumne Camp Project contracts.