

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF OAKLAND
AND
ATKINSON, ANDELSON, LOYA, RUUD & ROMO**

Whereas, the Oakland City Charter authorizes the City Attorney to retain special legal counsel without regard to the provisions of Article IX of the Oakland City Charter; and

Whereas, the City Attorney hereby finds that this agreement is for temporary services of a professional nature; and

Whereas, the City Attorney further finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service of the City;

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of August 14, 2015 between the City of Oakland, a municipal corporation, (hereinafter "City") One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612 and Atkinson, Andelson, Loya, Ruud & Romo 5075 Hopyard Road, Suite 210, Pleasanton, California 94588 (hereinafter "Counsel").

2. Scope of Services

Counsel agrees to perform the services specified in the Scope of Services/Retention Agreement, which is made a part of this Agreement. A Scope of Services/Retention Agreement is required for each matter and must be approved by the City Attorney. The Scope of Service Agreement(s) for each matter must include a written work plan and a "not to exceed amount." The Scope of Service Agreement(s) for each matter cannot be modified without the written approval of the City Attorney or one of the Chief Assistant City Attorneys. The maximum that will be paid for the entire scope of service per matter will not exceed the not to exceed amount included in the Scope of Service/Retention Agreement, even if the Counsel's actual costs exceed the amount. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement, the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

3. Time of Performance

This agreement is for the fiscal year, beginning July 1, 2015 through June 30, 2016.

4. Compensation and Method of Payment and Payment of Expenses

Counsel will be paid for performance in an amount based on actual costs but that will be "capped" so as not to exceed the amount agreed upon per the Scope of Services/Retention Agreement. The maximum that will be charged for the entire scope of service per matter will not exceed the capped amount, even if the Counsel's actual costs per matter exceed the capped amount. Counsel will be paid after approval of a monthly billing invoice for each matter. The invoice shall include the billing amount, total hours invoiced, total hours per day invoiced, hourly billing rate and the description of services rendered. Counsel will be responsible for all expenses incurred in performing services, which must be approved in advance and included in Attachment 1, Scope of Services Agreement. Any travel that requires an overnight stay or airline transportation must be pre-approved. If an overnight stay is necessary, the City has the right to approve the accommodations, and reimbursement for meals will be at the City's per diem rate. If airline travel is necessary, the City will reimburse at the coach rate.

5. Independent Counsel

a. Rights & Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Counsel shall be, and is, an independent Counsel, not an employee of the City. Counsel 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 Counsel in the performance of the services. Counsel shall be solely responsible for all matters relating to the payment of Counsel's employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Counsel's own acts and those of Counsel's subordinates and employees.

b. Counsel's Qualifications

Counsel represents that Counsel 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. Counsel warrants that Counsel and the Counsel's employees and subcontractor are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Counsel's performance

of Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Counsel will promptly advise the City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Counsel 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. Counsel has complete and sole discretion for the manner in which the work under this Agreement is performed.

c. Payment of Income Taxes

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

d. Non-Exclusive Relationship

Counsel may perform services for, and contract with, as many additional clients, persons or companies as Counsel, in Counsel's sole discretion, sees fit.

e. Tools, Materials and Equipment

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

f. Cooperation of City

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

g. Extra Work

Counsel will do no extra work under this Agreement without first receiving prior written authorization from the City Attorney or the Chief Assistant City Attorneys.

6. Proprietary or Confidential Information of the City

Counsel understands and agrees that, in the performance of the services under this Agreement or in contemplation thereof, Counsel may have access to private or confidential information that 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. Counsel agrees that all

information disclosed by the City to Counsel shall remain in confidence and used only in performance of the Agreement. Counsel shall exercise the same standard of care to protect such information as a reasonably prudent Counsel would use to protect its own proprietary data.

7. Ownership of Results

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

8. Copyright

Counsel shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

9. Audit

Counsel shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

Counsel shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for four years following the last fiscal year during which the City paid an invoice to Counsel under this Agreement.

In addition to the above, Counsel agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

10. Agents/Brokers

Counsel warrants that Counsel has not employed or retained any subconsultant, agent, company or person other than bona fide, full-time employees of Counsel working solely for Counsel, to solicit or secure this Agreement, and that Counsel has not paid or agreed to pay any subconsultant, agent, company or persons other than bona fide employees any fee, commission, percentage, 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.

11. Assignment

Counsel shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, 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.

12. Publicity

Any publicity generated by Counsel for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Counsel to assist Counsel in generating publicity for the project funded pursuant to this Agreement. Counsel further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by Counsel from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal property records. Counsel acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. Counsel shall, upon expiration or termination of this Agreement, deliver to the City all of the said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Counsel shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Counsel shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, Counsel shall immediately notify the Police Department, obtain a written police

report and notify the City in accordance with the "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Counsel shall obtain approval by the City Attorney in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.4.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Counsel must provide the insurance listed in **Schedule Q Insurance Requirements**. **Schedule Q** which is attached and incorporated here.

15. Indemnification

a. Notwithstanding any other provision of this Agreement, Counsel shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- i) Breach of Counsel's obligations, representations or warranties under this Agreement;
- ii) Negligent or willful acts or omissions in the course of performance of Counsel under this Agreement;
- iii) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Counsel;
- iv) Unauthorized use or disclosure by Counsel of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
- v) Claim of infringement of alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

b) For purposes of the preceding Subsections (i) through (vi), the term Counsel includes Counsel, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

- c) City shall give Counsel prompt written notice of any such claim of loss or damage and shall cooperate with Counsel, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d) Notwithstanding the foregoing, City shall have the right if Counsel fails or refuses to defend City with legal counsel acceptable to City to engage its own legal counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due to Counsel in the amount of anticipated defense costs plus additional reasonable amounts as security for Counsel's obligations under this Section 15. In no event shall Counsel agree to the settlement of any claim described herein without the prior written consent of City.
- e) Counsel acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any such action or claim which potentially falls within the indemnification provision, which obligation shall arise at the same time thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Counsel's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f) All of Counsel's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g) The indemnity set forth in this Section 15 shall not be limited to by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Counsel in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims of money due or to become due from City shall be subject to deduction or offset by City from any monies due Counsel by reason of any claim or counterclaim arising out of: (i) this Agreement, or ii) any purchase order, or iii) any other transaction with Counsel.

17. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S., passed January 15, 2008

and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, Counsel and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless Counsel or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between Counsel or its subcontractor and claimant, in which case Counsel or its subcontractor may withhold the disputed amount but shall not pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Department of Contracting and Purchasing upon the filing of a complaint. Counsel of its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Counsel or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the Counsel's next payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withhold directly to claimants for valid claims.

Counsel and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Counsel and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Counsel and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and Counsel is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following a receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by Counsel or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, the Counsel or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release Counsel or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Counsel and subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or

subcontractor that delivers goods and/or services pursuant to or in connection with this City of Oakland Agreement.

Prompt Payment invoice and claim forms are available at the City of Oakland's website: <http://cces.oaklandnet.com/cceshome> by clicking on the rightmost upper tab labeled Prompt Payment Ordinance. Invoice and claims inquires should be directed to City of Oakland Liaison, 510-238-6261, the Department of Contract and Purchasing, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, California, 94612.

18. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving thirty (30) calendar days' written notice to Counsel. Unless otherwise terminated, this Agreement will terminate on June 30, 2016.

19. Conflict of Interest

a. Counsel

The following protections against conflict of interest will be upheld:

i. Counsel 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. Counsel 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 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. Counsel 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 Counsel.

iv. Counsel 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. Counsel shall exercise due diligence to ensure that no such official will receive such an interest.

v. Counsel further warrants and represents, to the best of Counsel's present knowledge and excepting any written disclosures as to these matters already made by Counsel 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 Counsel 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 "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 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 \$500 in the previous year. Counsel agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Counsel'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. Counsel understands that in some cases Counsel or persons associated with Counsel 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. Counsel further understands that, as a public officer or official, Counsel or persons associated with Counsel may be disqualified from future City contracts to the extent that Counsel 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. Counsel shall incorporate or cause to be incorporated into all sub agreements for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing here is intended to, nor waives, 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, Counsel understands and agrees that, if the City reasonably determines that Counsel has failed to make a good faith effort to avoid an improper conflict of interest or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Counsel to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Counsel is responsible for the conflict of interest situation.

20. Non Discrimination/Equal Employment Practices

Counsel 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, Counsel agrees as follows:

a. Counsel and Counsel's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscriminatory policy shall include, but not be limited to 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. Counsel and Counsel's subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of the Counsel, that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

c. Counsel shall make its goods, services and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1 Declaration of Compliance with the American with Disabilities Act, attached hereto and incorporated herein.

d. If applicable, Counsel will send to each labor union or representative of workers with whom Counsel has a collective bargaining agreement or contract of understanding, a notice advising the labor union or workers' representative of Counsel's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

21. Local, Small Business Enterprise Program (LSBE)

a. *Requirement* – There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Counsel shall comply with the twenty percent local business participation requirement at a rate of ten percent (10%) local and ten percent (10%) small local business participation. The requirement may be satisfied by a certified prime Counsel and/or subcontractor(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland to earn credit toward meeting the twenty percent requirement.

b. *Good Faith Effort*-In light of the twenty percent requirement, good faith effort documentation is not necessary.

c. *Incentives* – Upon satisfying the twenty percent requirement, a Counsel will earn two preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.

d. *Banking* – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City-funded project and will allow Counsel to accumulate credits for hiring certified local businesses and certified small local businesses on non-City funded projects within a year of the City-funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Counsel will have one year to apply credits. A certificate validating banked credits must be issued by the City before the submittal or bid date.

e. *The Exit Report and Affidavit (ERA)* – This report declares the level of participation achieved and will be used to calculate banked credits. The prime Counsel must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE subcontractor and submitted to the City Administrator's Department of Contracting and Purchasing along with a copy of the final progress payment application.

f. *Joint Venture and Mentor Protégé Agreements*. If a prime Counsel is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. To earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Department of Contracting and Purchasing prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications

and elements of City approved Mentor Protégé relation are available upon request.

g. Counsel shall submit information concerning the ownership and workforce composition of Counsel's firm as well as its subcontractors and suppliers, by completing **Schedule D** Ownership, Ethnicity and Gender Questionnaire and **Schedule E** Project Consultant Team attached and incorporated herein and made part of this Agreement.

h. All affirmative action efforts of Counsel are subject to tracking by the City. This information or data shall be used for statistical purposes only. Counsel is 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 Counsel and the job title or function and the methodology used by Counsel to hire and/or contract with the individual or entity in question.

i. In the recruitment of subcontractors, the City of Oakland requires Counsel 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 Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual orientation, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires Counsel to undertake nondiscriminatory and equal outreach efforts, which includes outreach to minorities and women as well as other segments of Oakland's business community.

22. Living Wage Requirements

If the amount of this Agreement is equal to or greater than \$25,000 annually, then Counsel must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (Counsel) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement and, unless exemptions apply or a waiver is granted, Counsel must 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 \$12.53 with health benefits or \$14.40 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. Effective July 1st of each year, Counsel shall pay adjusted wage rates.
- b. Health benefits – Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.87 per hour. Counsel 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 at least 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. The ten uncompensated days off shall be made available, as needed, for a personal or immediate family illness after employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Counsel shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist with EIC. Websites include but are not limited to: (1) <http://www/irs/gov> for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit: <http://www.cbpp.org/eic2008>

23. Minimum Wage Ordinance

Pursuant to the Oakland Municipal Code Chapter 5.92, the New Minimum Wage Law became effective March 2, 2015.

Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate

that is most beneficial to the employee. Thus, since Oakland's current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City's minimum wage rate.

The Measure: (1) establishes a \$12.25 per hour minimum wage, (2) requires paid sick leave and (3) requires payment of service charges to hospitality workers.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

24. Arizona Purchasing Boycott

Arizona and Arizona-Based Businesses: Counsel agrees that in accordance with Resolution No. 82727 C.M.S., passed in May, 2010, neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Counsel acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its business entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

25. Dispute Disclosure:

Counsel is required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Counsel agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Contractor's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner that prohibits discrimination in the provision of employee benefits by City contractors and Counsel between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following City contractors and Counsel are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the City or (2) of real property owned by others for the City's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a Counsel's operations that occur (1) within the City; (2) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1 – Equal Benefits-Declaration of Nondiscrimination**.

27. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires City Council approval. The City of Oakland Campaign Reform Act prohibits Counsel who are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Counsel must sign and date an Acknowledgment of Campaign Contribution Limits Form attached and incorporated here as **Schedule O**.

28. Nuclear Free Zone Disclosure

Counsel represents, pursuant to **Schedule P Nuclear Free Zone Disclosure Form**, that Counsel is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Before

execution of this Agreement, Counsel shall complete **Schedule P**, attached hereto.

29. Political Prohibition

Subject to applicable state and federal laws, moneys 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 the Agreement.

31. Business Tax Certificate

Counsel shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

32. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all-of-the project at any time. In such event, the City shall give thirty days (30) written notice of abandonment. In the event of abandonment before completion of the final drawings, if applicable, and cost estimates, Counsel shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Counsel shall present to the City a complete report of the 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 the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty days (30) following submission of a final statement by Counsel.

Should the project or any portion of it be abandoned, the City shall pay Counsel for all services performed thereto in accordance with the terms of this Agreement.

33. Validity of Contracts

This Agreement shall not be binding or of any force or effect until signed by the City Attorney or the City Attorney's designee.

34. Governing Law

This Agreement shall be governed by the laws of the State of California.

35. Notices

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland
Office of the City Attorney
One Frank Ogawa Plaza 6th Floor
Oakland, CA 94612
(510) 238-3601

Atkinson, Andelson, Loya, Ruud & Romo
5075 Hopyard Road, Suite 210
Pleasanton, California 94588
(925) 227-9200

36. Entire Agreement of the Parties

This Agreement supersedes all agreements, either oral or written, between the parties with respect to the rendering of services by Counsel for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

37. Modification

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

38. 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 situations 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.

39. Time of the Essence

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

40. Commencement, Completion and Close Out

It shall be the responsibility of the Counsel to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

Any time extension granted to Counsel to enable Counsel to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should Counsel not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, Counsel shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of Counsel to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Counsel.

41. Approval

If the terms of this Agreement are acceptable to Counsel and the City, sign and date below.

42. Inconsistency

If there is any inconsistency between the main Agreement and the attachments/exhibits, the text of the main Agreement shall prevail.

City of Oakland,
a municipal corporation

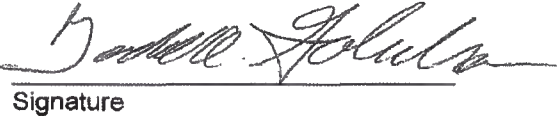
Counsel,

Barbara J. Parker
City Attorney

Atkinson, Andelson, Loya, Ruud & Romo



Signature



Signature

8/21/15

Date

8-14-15

Date

City of Oakland
Business Tax Certificate Number

Extension of the Professional Services Agreement
Between the City of Oakland
And
Atkinson, Andelson, Loya, Ruud & Romo

This Extension dated May 23, 2016 extends the original agreement dated August 14, 2015, by and between the CITY OF OAKLAND, a municipal corporation (hereinafter "City"), and Atkinson, Andelson, Loya, Ruud & Romo (hereinafter "Counsel").

The original agreement is extended as follows:

1. **Time for Performance**

The time for performance of contracted professional legal services is extended for the upcoming fiscal year, **July 1, 2016 to June 30, 2017.**

2. **Scope of Services**

Counsel agrees to continue to provide professional services required in the original contract and described in the original Scope(s) of Services.

3. **Compensation**

Counsel will be paid for the performance of duties described in the individual Scope(s) of Services (Attachments). Compensation will be based upon actual costs and will be "Capped" so as not to exceed the amount authorized in the Attachments and any approved Amendments to the Attachments. Any proposed changes to the rates specified in the Attachments require prior approval of the City Attorney or her designee.

4. **Minimum Wage – This agreement is subject to the new "Minimum Wage" law.**

Pursuant to the Oakland Municipal Code Chapter 5.92, the New Minimum Wage Law went into effect March 2, 2015.

Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate that is most beneficial to the employee. Thus, since Oakland's current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City's minimum wage rate.

The Measure: (1) establishes a \$12.25 per hour minimum wage; (2) requires paid sick leave and (3) requires payment of service charges to hospitality workers.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

5. **Prompt Payment Ordinance**

This amendment is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S., Passed January 15, 2008 and effective February 1, 2008), establishing a policy requiring payment within 20 business days after receipt of an invoice for purchase of goods and/or services.

6. **Arizona and Arizona-Based Businesses**

Counsel agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.


Counsel acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

7. **Dispute Disclosure**


Counsel is required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Counsel agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Counsel's request. Failure to disclose pending disputes prior to execution of this extension shall be a basis for termination of this agreement.

All other terms and conditions of the original agreement, except for those modified by this Extension, shall remain unchanged and in full force and effect.

City of Oakland
Barbara J. Parker, City Attorney



Signature Date 6/20/16

Atkinson, Andelson, Loya, Ruud &
Romo
 for

Signature Date May 31, 2016

Meredith E. Brown

Print Name
Senior Partner

Title

Extension of the Professional Services Agreement
Between the City of Oakland
And
Atkinson, Andelson, Loya, Ruud & Romo

This Extension dated June 19, 2017 extends the original agreement expiring June 30, 2017, by and between the CITY OF OAKLAND, a municipal corporation (hereinafter "City"), and ATKINSON, ANDELSON, LOYA, RUUD & ROMO (hereinafter "Counsel").

The original agreement is extended as follows:

1. Time for Performance

The time for performance of contracted professional legal services is extended for the upcoming fiscal year, **July 1, 2017 to June 30, 2018.**

2. Scope of Services

Counsel agrees to continue to provide professional services required in the original contract and described in the original Scope(s) of Services.

3. Compensation

Counsel will be paid for the performance of duties described in the individual Scope(s) of Services (Attachments). Compensation will be based upon actual costs and will be "Capped" so as not to exceed the amount authorized in the Attachments and any approved Amendments to the Attachments. Any proposed changes to the rates specified in the Attachments require prior approval of the City Attorney or her designee.

4. Minimum Wage – This agreement is subject to the new "Minimum Wage" law.

Pursuant to the Oakland Municipal Code Chapter 5.92, the New Minimum Wage Law went into effect March 2, 2015.

Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate that is most beneficial to the employee. Thus, since Oakland's current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City's minimum wage rate.

The Measure: (1) establishes a \$12.86 per hour minimum wage; (2) requires paid sick leave and (3) requires payment of service charges to hospitality workers.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

5. **Prompt Payment Ordinance**

This amendment is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S., Passed January 15, 2008 and effective February 1, 2008), establishing a policy requiring payment within 20 business days after receipt of an invoice for purchase of goods and/or services.

6. **Arizona and Arizona-Based Businesses**

Counsel agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Counsel acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if it's Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.


7. **Dispute Disclosure**

Counsel is required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Counsel agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Counsel's request. Failure to disclose pending disputes prior to execution of this extension shall be a basis for termination of this agreement.

All other terms and conditions of the original agreement, except for those modified by this Extension, shall remain unchanged and in full force and effect.

City of Oakland
Barbara J. Parker, City Attorney

Atkinson, Andelson, Loya, Ruud & Romo



Signature 6/20/17
Date

Meredith Brown

Print Name

Attorney

Title



Signature 6/30/17
Date

Extension of the Professional Services Agreement
Between the City of Oakland
And
Atkinson, Andelson, Loya, Ruud & Romo

This Extension dated July 6, 2018 extends the original agreement which expired June 30, 2018, by and between the CITY OF OAKLAND, a municipal corporation (hereinafter “City”), and ATKINSON, ANDELSON, LOYA, RUUD & ROMO (hereinafter “Counsel”).

The original agreement is extended as follows:

1. Time for Performance

The time for performance of contracted professional legal services is extended for the upcoming fiscal years, **July 1, 2018 to June 30, 2020.**

2. Scope of Services

Counsel agrees to continue to provide professional services required in the original contract and described in the original Scope(s) of Services.

3. Compensation

Counsel will be paid for the performance of duties described in the individual Scope(s) of Services (Attachments). Compensation will be based upon actual costs and will be “Capped” so as not to exceed the amount authorized in the Attachments and any approved Amendments to the Attachments. Any proposed changes to the rates specified in the Attachments require prior approval of the City Attorney or her designee.

4. Minimum Wage – This agreement is subject to the new “Minimum Wage” law.

Pursuant to the Oakland Municipal Code Chapter 5.92, the New Minimum Wage Law went into effect March 2, 2015.

Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate that is most beneficial to the employee. Thus, since Oakland’s current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City’s minimum wage rate.

The Measure: (1) establishes a \$12.86 per hour minimum wage; (2) requires paid sick leave and (3) requires payment of service charges to hospitality workers.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

5. **Prompt Payment Ordinance**

This amendment is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S., Passed January 15, 2008 and effective February 1, 2008), establishing a policy requiring payment within 20 business days after receipt of an invoice for purchase of goods and/or services.

6. **Arizona and Arizona-Based Businesses**

Counsel agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Counsel acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if it's Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

7. **Dispute Disclosure**

Counsel is required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Counsel agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Counsel's request. Failure to disclose pending disputes prior to execution of this extension shall be a basis for termination of this agreement.

All other terms and conditions of the original agreement, except for those modified by this Extension, shall remain unchanged and in full force and effect.

City of Oakland
Barbara J. Parker, City Attorney

Barbara J. Parker
Signature Date 7/12/18

Atkinson, Andelson, Loya, Ruud & Romo

[Signature] 7/9/18
Signature Date

Meredith E Brown
Print Name

Partner
Title

ATTACHMENT 2

**CITY OF OAKLAND
SCOPE OF SERVICES/RETENTION AGREEMENT**

February 22, 2018

Atkinson, Andelson, Loya, Ruud & Romo
5075 Hopyard Road, Suite 210
Pleasanton, California 94588

Re: Oakland Police Commission

Atkinson, Andelson, Loya, Ruud & Romo agrees to represent the City of Oakland in the matter referenced above. In addition to this attachment, all of the conditions in the Professional Services Agreement executed between the City of Oakland and Atkinson, Andelson, Loya, Ruud & Romo remain valid.

Your staffing of this matter will consist of the individuals listed on this attachment. You agree not to involve, for billing purposes, additional attorneys without the prior written consent of either the City Attorney or the Chief Assistant City Attorneys. You must obtain the City Attorney's or the Chief Assistant City Attorneys' written consent before starting any significant legal research or any other task that is not included in your original scope-of-service outline.

The amount to be paid pursuant to this Agreement shall not exceed **\$54,000**. All reimbursable expenses must be included in this budget. The maximum that will be paid for the entire scope of service per matter will not exceed the not to exceed amount above, even if the Counsel's actual costs per matter exceed the amount referenced above. If the scope of service requires a change, the Office of the City Attorney must approve the changes in writing before they are incurred. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval.

ATTACHMENT 2

PAGE 2 OF 3

GENERAL INSTRUCTIONS

Prepare all documentation necessary for this matter in accordance with these instructions and the City of Oakland's Policy Guide for Outside Law Firms. You should promptly inform the City Attorney or the Chief Assistant City Attorneys of major developments and of material legal issues that may arise while providing legal services.

The City of Oakland will rely on your advice and counsel as well as any documents prepared by you, to properly protect its interests and to acquire legally enforceable rights.

COMMUNICATION AND WORK PRODUCT

The Deputy City Attorney assigned to this matter is Ryan Richardson. Except as otherwise noted in this Agreement, direct questions, communications and correspondence to Ryan Richardson.

BILLING INSTRUCTIONS

Separate bills/invoices are required for each specific matter. Absent an express agreement to the contrary, bills/invoices must be submitted monthly, unless another arrangement is agreed to in advance, or unless the matter is inactive.

All bills/invoices should include hours spent (to nearest fraction), brief description of the services rendered and the individual who provided the services. A summary of the total hours by individual with his/her billing rate should also be included.

All bills/invoices for services and disbursements must conform to the format of the budget per the Scope of Service Agreement, i.e., the bill/invoice must be in a form that will enable the Office of the City Attorney to compare the items that made up the budget with the items that appear on the bill/invoice.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement, the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

OCA will not approve bills/invoices that are in excess of budget, absent prior approval.

