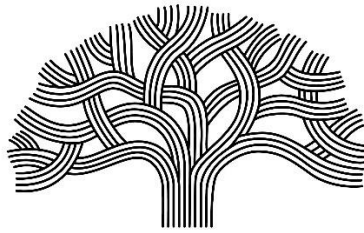


**REQUESTS FOR QUALIFICATIONS (RFQ)
FOR
ON-CALL PRINT & DIGITAL
GRAPHIC DESIGN SERVICES 2019-2022**



CITY OF OAKLAND

Sabrina Landreth,
City Administrator

January 2019

City of Oakland, City Administrator's Office
1 Frank H. Ogawa Plaza, 3rd floor, Oakland, CA 94612

Project Manager: Harry Hamilton
Business Development Division, Economic & Workforce Development Department
hjhamilton@oaklandca.gov or (510) 238-6766

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I. Project Information

Request for Qualifications for On-Call Graphic Design Services 2019-2022

The City of Oakland seeks to establish multiple on-call contracts with graphic design firms (consultants) to provide a range of services at a reasonable cost. The City anticipates awarding three-year, on-call contracts to a pool of qualified consultants with the possibility of extending the contract term for one additional year based on need and satisfactory performance by consultants.

The total maximum value of each on-call contract is not-to-exceed \$250,000 over the three-year contract period. As graphic design opportunities arise within City departments, department staff would contact vendors in the approved pool to negotiate a specific scope of work and cost proposal for each project, as outlined in the Projects and Task Orders section below, not to exceed a cumulative \$250,000 of work during the three-year period.

Local Business Requirement: 50% Local/Small Local Business Enterprise (L/SLBE) participation. It is highly recommended that primes verify the LBE/SLBE status of their subconsultants prior to submittal.

Deadline for Questions:

5:00 p.m., Wednesday, **February 13, 2019**. Please submit questions via email to hjhamilton@oaklandca.gov.

Pre-Proposal Submittal Meeting: (Voluntary)

Time: 2:00 p.m. on Thursday, **February 14, 2019**, in the Fox Conference Room, Dalziel Building, 250 Frank H. Ogawa Plaza, 5th Floor, Suite 5301

Proposals Due:

2:00 p.m., Friday, **March 1, 2019**, to Office of the City Administrator, Contracts and Compliance Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Suite 3341, Oakland, CA 94612, (510) 238-3190

Submittals not received and time stamped by 2:00 p.m. at the above-referenced location will not be accepted.

Contact Information:

Project Manager: Harry Hamilton, hjhamilton@oaklandca.gov or (510) 238-6766
Contact Compliance Officer: Shelley Darensburg, Sr. Contract Compliance Officer, sdarensburg@oaklandca.gov or (510) 238-7325

Important Disclaimers and AB 2036 Compliance:

It is the responsibility of each prospective bidder to download and print all bid documents, including any addenda, and to verify the completeness of their printed bid documents before submitting a bid. The City does not warrant, represent, or guarantee the accuracy or completeness of any bid documents and/or information retrieved from other sources. The City is not responsible for any loss or damage including, but not limited to, time, money, or goodwill arising from errors, inaccuracies or omissions in any bid documents and/or information obtained from other sources. It is each prospective bidder's responsibility to check these sites through to the close of bids for any applicable addenda or updates.

INTRODUCTION

The City of Oakland requires the creative skills of experienced and thoughtful full-service graphic design vendors to assist the City with visual communications and create new graphic materials with a consistent identity. The objective is to enhance the effectiveness and reach of the City's communications to multi-lingual, multi-generational, racially and culturally diverse, English-speaking and non-English speaking audiences through clear and compelling visual communications.

The materials produced will present and promote a variety of City programs, projects, services, and initiatives through clear, strong, consistent, culturally competent, and compelling visual identity and design. The consistent graphic identity will be conveyed through font, imagery, copy style, and other visual elements.

Graphic design needs may include, but are not limited to:

- Print collateral such as reports, flyer templates, postcards, brochures, bill inserts, calendars, posters, informational door hangers, newsletters, banners, templates for PowerPoint presentations, outdoor and print advertising, and signage for informational displays;
- Artwork for t-shirts, water bottles, buttons, and similar products; and
- Designs and content for various electronic platforms, including but not limited to, mobile devices, web sites, and social media channels.

One project under this RFQ may be development of a style guide for consistent usage of the City's visual identity, including logo and wordmark. Another example of an upcoming project is the Economic & Workforce Development Department's need for new materials that highlight Oakland's many attributes as a business location, including the city's central location, exceptional transit connections, access to a talented workforce, quality of life, and unique character. A third example may be the design and production of the Oakland Public Library's Annual Report.

To successfully design and create the items outlined above, the Consultant will need to provide a variety of services including creation of original designs, infographics, and web assets; illustrations; cartography; manipulation of photographs; copy writing; and preparation of print ready and web-ready electronic files.

The City's high-visibility programs require the services of Consultants with excellent knowledge of, and the ability to effectively use color theory, typography, illustration, layout, photography, web pattern portfolios, and message communication that includes social media posts.

These messaging opportunities require the creative skills of thoughtful and experienced designers to formulate memorable identities for programs, projects, and individual products.

Base maps will be provided with layers in either eps, ai or pdf formats allowing the vendor to adjust map elements to match the graphic identity of the materials.

Concurrently to this RFQ, the City will be issuing a separate RFQ to solicit photographic and video services to augment its existing image library.

Deliverables may include integrated production HTML/CSS that incorporates both the City's Pattern Portfolio and Visual Identity Guidelines. The code will be responsive to a range of devices and browsers as required and be produced under the close guidance of the City's Digital Services Team.

The City has adopted an Environmentally Preferable Purchasing (EPP) Policy ([available at this hyperlink](#)) with which Consultants will be required to comply with the following sections: Source Reduction - §3.1.1 and §3.1.7; Recycled Content Products - §3.2.1, and §3.2.6; and Toxics Pollution Reduction - §3.6.8.

SCOPE OF SERVICES

Consultants' scopes of services will include, but are not limited to, full design services for marketing, outreach, and education materials such as infographics, reports, fact sheets, brochures, flyers, posters, signage, advertisements, postcards, newsletters, and artwork for promotional items. The selected Consultants will be responsible for a variety of services, including design consultation, creation of original designs, illustrations, photo correction, copy writing, preparation of print-ready and web-ready electronic files, and products for web, mobile, and social media platforms. The City may require Consultants to develop:

- A. A graphic theme that will carry through to multiple and varied printed and electronic products for a particular program or initiative;
- B. Creative and engaging content, including infographics, to use on social media channels, web, and mobile applications; and
- C. Artwork that incorporates a consistent look and increases public awareness to gain support for various City initiatives and programs.

The Consultants will work closely with City staff to create scopes of service for each assignment. In performing this work, it is essential that Consultants meet the City's expectations with regard to requests for changes, quality control, deadlines, and budgetary restrictions.

PROJECTS AND TASK ORDERS

The City anticipates that the process for work assignment will consist of, but may not be limited to, the following:

1. Work will be ordered on an assignment-by-assignment basis;
2. For each assignment, the City will provide the Consultants the following information:
 - a. Subject
 - b. Goal
 - c. Target audience(s)
 - d. Description of issues
 - e. Suggested themes / messages
 - f. Specific work products to be delivered
 - g. Relevant related pieces currently in use
 - h. Relevant historical or background information for the program or initiative
 - i. Number of design concepts desired
 - j. Number of rounds of edits that will be included
 - k. Required turn-around time
 - l. Required format of output
3. Consultants will provide estimated costs for each assignment based on identified deliverables;
4. The City will authorize Consultants to commence work upon approval of cost estimate;
5. Consultants will provide the City with concepts and drafts for review and comment;
6. Consultants will provide camera-ready and electronic-ready artwork and other products for various electronic platforms including, but not limited to, web, mobile applications, and social media channels in appropriate format to the City for final approval and acceptance;
7. Consultants will provide final camera-ready and electronic artwork including all fonts, separations, etc. via email or file-sharing platform. Original artwork files will be due to the City in Adobe Illustrator, InDesign, PDF, HTML5, JPG, GIF or PNG format (unless otherwise specified in Step 2) that is editable and in high resolution prior to or along with invoice submittal;
8. At the conclusion of the project, native design files will be packaged with fonts and all linked elements included and delivered to the City; and
9. Consultants will comply with the City's [Environmentally Preferable Purchasing](#) (EPP) Policy requirements.
10. The ownership of the designs resulting from this RFQ will reside with the City of Oakland.

Deliverables may include, but are not limited to:

1. Printable, electronic artwork and proofs in the format specified for each project assigned; products for Web and social networking platforms including, but not limited to, web and mobile applications and social media channels.
2. Printing specifications of sufficient detail to allow printers to understand the entire scope of printing required and provide responsive printing quotes; and
3. A project communications strategic plan and associated materials.

Examples of City projects potentially requiring these services include, but are not limited to:

- Oakland Environmental Stewardship and Volunteer program engages and supports volunteers to clean, green, beautify, and maintain public City spaces including parks, creeks, storm drains, and neighborhoods. The program coordinates two citywide volunteer events: Earth Day in April, and Creek to Bay Day in September, and supports community-led volunteer events throughout the year. Additional information about the program can be found [here](#). The program runs annual promotional campaigns that include various forms of print collateral such as postcards, posters, mailers, newspaper and magazine ads, and large-format transit advertisements. These campaigns utilize illustration as well as photographic and text content. Additionally, the program develops and produces promotional items such as custom-printed bandanas, t-shirts, buttons, water bottles, and stickers.
- Oakland Recycles, the City's Recycling and Solid Waste Program, uses communication to implement its Zero Waste goal and increase participation of the residential, commercial, and building communities in its waste reduction, recycling, and compost programs. The program employs communications for related City ordinances including outreach to the development and building communities for a Construction and Demolition permit system, and outreach to the business community for a Commercial Recycling permit system and County and State recycling mandates. Oakland Recycles uses graphic support in updating its website and social media platforms, designing and updating print media, and creating outreach materials for community events.
- Sustainable Oakland uses graphic design to support the [Sustainable Annual Report](#) that highlights the social, environmental, and green business successes occurring within the city. Additionally the City's [Energy and Climate Action Plan \(ECAP\)](#) may require graphic design support when the document is updated in 2019-2020. Graphic design materials in the ECAP illustrate the City's greenhouse gas reduction goals, community and governmental strategies to reduce pollution, and the impacts the City faces as the climate changes overtime. The ECAP can be found [here](#). This program also produces infographics and marketing materials such as brochures in support of the greenhouse gas reductions, social and environmental equity, and energy efficiency and conservation efforts. Graphic support for the design of these materials will include application of color and graphic schemes consistent with the Sustainable Oakland Annual Report.

- [Creek, Watershed and Stormwater](#) program will require graphic design support for education and outreach on stormwater requirements (e.g., trash reduction), and interpretative signage on water quality and creek restoration topics.
- Various Oakland Public Works and Department of Transportation services require visual communications support, including street lighting, park maintenance, sewer and storm drain maintenance, transportation and traffic improvement, street rehabilitation and surfacing, and parks and open space landscaping projects. Promoting and communicating the OPW programs and services will require the use of print, web, and outdoor and social media services.

II. Submittal Requirements

Submit three (3) bound copies and one (1) soft copy on CD of the statement of qualification by the deadline delivered to:

Office of the City Administrator, Contracts and Compliance Division
250 Frank H. Ogawa Plaza, Suite 3341
Oakland, CA 94612
Phone: (510) 238-3190.

The Submittal should be organized in the order in which the required elements are presented below. Excluding the cover letter (Item 1), the Exhibits (Item 8), and any resumes provided in an appendix, all pages shall be numbered starting from Project Team (Item 3). The maximum page limit and format requirements do not apply to the document covers, transmittal or cover letter, required exhibits/schedules/forms (Item 8), work samples (Item 5C), signed addenda (Item 2), and section dividers/tabs.

Elements to be included in the Submittal are described below:

1. Transmittal or Cover Letter

Transmittal Letter addressed to City Administrator Sabrina Landreth, signed by an officer of the prime firm, shall not exceed two pages. In the case of a joint venture or other joint prime relationship, one officer of each prime must sign.

2. Acknowledgement of Addenda

If any addenda are issued by the City, you must acknowledge your receipt of them either by including a statement in your transmittal letter or by returning signed addenda with the submittal.

3. Project Team (Suggested Limit - 2 pages)

- a. Project Team must be able to demonstrate expertise, experience, and the ability to comprehensively handle the various types of projects and tasks described in the “Scope of Services” and “Projects and Task Orders” sections of this RFQ. Additionally, the Project Team must reflect compliance with the City’s Local and Small Local Business Enterprise Program, and a true intent to utilize the listed sub-consultants. At a minimum, teams shall complete and submit Schedule E as a summary sheet showing your project team.
- b. List firm and sub-consultants with individual addresses, telephone numbers, and areas of expertise. Briefly describe the project responsibility of each team member. Identify which consultants are Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE). Additionally, for LBEs/SLBEs, submit a copy of current business license and date established in Oakland.
- c. Although project assignments are yet to be defined, it is recommended to propose a typical Project Team (with sub-consultants, if and as appropriate) using a hypothetical percentage of work distribution.

4. Project Personnel (Suggested Limit - 3 pages)

For the prime consultant, either principal-in-charge and lead graphic artist. The lead graphic artist shall be a full-time employee of the prime consultant for the project.

5. Relevant Experience – Prime Consultant and Sub-consultants (Suggested Limit – 3 pages).

Successful Consultants will meet the following minimum qualifications:

A. Principal Graphic Artist Qualifications

The Consultant and/or its subconsultants shall have a minimum of five (5) years’ work experience in the field of graphic design services, including, but not limited to creative design, development of promotional materials, production management, concept development, and artwork. The Consultant shall have excellent graphic design skills combined with experience creating and executing concepts across numerous digital platforms, including web, mobile applications, and social media channels.

B. Software and Hardware Capabilities

Consultants shall have sufficient working knowledge of the appropriate software to produce the desired deliverables required by the City. Software compatible with Microsoft Office products is required. Consultants should have the capability to provide electronic format artwork to printer and for web use as required. Examples may include use of:

- a) Adobe Illustrator for original format - editable high resolution; and
- b) Portable Document Format (PDF), Graphic Interchange Format (GIF), Joint Photographic Experts Group (JPEG) for web format – at an appropriate size (dimensions and files size for the intended use).

C. Experience

1. Provide a portfolio of three campaigns/projects, each developed for a different client. The portfolio should include examples of each of the following media:
 - i. Print materials (e.g., brochures/flyers/reports/posters);
 - ii. Products for web and electronic media; and
 - iii. Artwork for outdoor media or other format products (e.g., banners, transit shelters, billboards, buttons, bags, and giveaways).

No more than one City of Oakland project should be included in the portfolio. Project samples should reflect the firm's work for all the design and layout that best represents the capabilities of the firm to produce the types of products described herein for the City's programs.

Please note if your firm specializes in graphic design services that support a particular type of event or activity (e.g., festivals, public awareness campaigns, or new service rollout).

For each of the three projects describe:

- i. Creative design and use of color or photography;
 - ii. Firm's or individual project responsibility; and
 - iii. Client name, address, contact person, and telephone number.
2. Describe experience for providing full services that include, but are not limited to, creative design, development of promotional materials, production management, design concept, graphic design, and artwork.
3. Describe experience and familiarity in developing culturally competent, effective graphic design and visual communications to meet the needs of racially and linguistically diverse audiences.
4. Describe firm's capacity to deliver high-quality services and materials on short notice under tight deadlines. Specifically address firm's workload capacity and level of experience working with government agencies.

5. Describe experience and ability to work effectively with local government staff and other stakeholders to address the various interests in developing a successful project.
 6. Provide relevant work products, either five (5) printed copies or hyperlinks to online examples.
6. **References** (Suggested Limit - 2 pages)
 Prime Consultant(s) should provide three (3) business-related references, giving name, company, address, telephone number, and business relationship to firm(s).
7. **Hourly Billing Rates** (Suggested Limit - 2 pages)
- a. Prime Consultant and Sub-Consultants shall provide a complete list of hourly rates for all staff by position (i.e., Principal, Project Manager, Clerical, etc.). Hourly rates shall be itemized and all-inclusive (i.e., base salary, fringe benefits, overhead, indirect cost surcharges, profit, etc.).
 - b. Mark-up on all reimbursable expenses (i.e., sub-consultant fee, printing, production costs, photography, equipment rental, mailing/postage, use of vehicle, software procurement, materials acquisition, insurance premiums etc.) shall be individually negotiated and subject to the City's approval, but may not in any case exceed 10%.
 - c. The contract amount will be a maximum, not-to-exceed amount. During the initial three (3) year contract term, there is no provision for hourly rate increases/adjustments by the Prime Consultant or any Sub-Consultants. If an amendment to extend the contract expiration becomes necessary, hourly rate increases/adjustments will be permitted in accordance with the annual increase stipulated each July 1 by the City's Living Wage Ordinance (Chapter 2.28 of the Oakland Municipal Code).
 - d. **Billing rates will not be a factor in the evaluation. Billing rates shall be submitted in a separate, sealed envelope.** However, the City reserves the right, after the firms have been selected, to decline to enter into a contract with a firm whose rates are deemed to be unreasonable at the City's sole discretion.
8. **Required Exhibits, Schedules, Forms** (see APPENDIX)
- Complete and submit the following schedules:
- Schedule E: Project Consultant Team Listing
 - Schedule E-2: Oakland Workforce Verification (if applicable-see Section IV.10e)
 - Schedule O: Campaign Contribution Limits
 - Schedule W: Border Wall Prohibition

III. Selection Process (May be Revised)

Evaluation of Statements of Qualifications

The Submittals will be evaluated using the following criteria and scored as described below. The City has allocated two (2) weeks for the review and scoring of the Submittals.

The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the submittals:

1. **Relevant Experience** (40) points
 - a. Experience on three (3) campaigns/projects providing services similar to those described in this RFP. Relevant experience may include but is not limited to:
 - i. Consultant's specialty in graphic design; and
 - ii. use of design elements to effectively communicate a message; design elements may include media type for target audience, photography and iconography, typography, color scheme and layout.
2. **Qualifications** (10) points
Professional background and qualifications.
3. **References** (10) points
Three business related references input.
4. **Submittal Organization & Firm's Capacity to Fulfill Assignments** (25) points
 - a. Presentation, completeness, clarity, organization, and responsiveness of submittal.
 - b. Resources that the team offers that are relevant to the successful completion of future assigned tasks.
 - c. Flexibility to meet schedules, including any unexpected work. Ability to perform on short notice and under time constraints and to perform numerous projects at the same time.
 - d. Cost control procedures in design and artwork production.
5. **Prior experience and ability to work** with City staff, community groups and other stakeholders, and translating various requirements and interests into successful projects. (15 Points)
6. **Additional preference points** per Local/Small Local Business Enterprise Program:
<https://www.oaklandca.gov/documents/local-small-local-business-enterprise-program>

Based on an evaluation of the Submittal's, the City will develop a "short list" of firms to be considered for further evaluation, possibly including oral interviews. References, including past

performance on City projects completed by the firms, if applicable, may be considered in the evaluation process.

INTERVIEW OF SHORT-LISTED FIRMS

If needed, oral interviews may be held with short-listed firms. The short-listed firms will be notified in writing whether interviews will be held and provided with information on the interview format. It is presently anticipated that the interviews will be conducted the week of March 18, 2019.

The City reserves the right to select consultants based solely on the SOQ's, and not conduct oral interviews.

CONTRACT NEGOTIATIONS

The contract amount (including reimbursable expenses) will be a maximum not-to-exceed amount on the tasks described in Article I and the hourly rates submitted under Article II, or lesser rates mandated by the City. Reimbursable expenses are subject to prior approval of the City. The amount for such expenses will be included in the maximum not-to-exceed amount.

CONTRACT AWARD

1. Once a final award is made, all RFQ responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.
2. The selected consulting firm shall be required to maintain auditable records, documents, and papers for inspection by authorized local, state and federal representatives. Therefore, the consulting team may be required to undergo an evaluation to demonstrate that the firm uses recognized accounting and financial procedures.

IV. City Council's Policies and Programs

Please carefully review all the terms and conditions described below. The City will award contracts only to firms that are in full compliance.

1. Definitions for this section:
 - a. “consultant”, “prime consultant” and “proposer” are defined as a professional services consultant.

2. Pre-Proposal Meeting Information:

Voluntary attendance is stated in the *East Bay Times* newspaper legal ad and in the Project Information section of the RFQ. Topics to be discussed at the meeting may include, but are not limited to, project requirements and mandatory City policies and programs such as the Local/Small Local Business Enterprise Program, and living wage requirements.

3. Submittal Documents and Addenda:

Submittal Documents and Addenda are available digitally only and provided free of charge through the website listed below. Hard copies are NOT available for purchase from the City. Courtesy notifications for contracting opportunities are only emailed to vendors registered in iSupplier.

 - a. iSupplier System (City's official site):
<https://www.oaklandca.gov/departments/contracts-compliance>
Registration in iSupplier, the City's payment and procurement system, is required in order to receive a contract, payments and notifications of contracting opportunities. Please seek to register on iSupplier as soon as possible. New registrants can email iSupplier@oaklandca.gov for registration instructions. For further assistance in registering, contact Dasco Munoz at dmunoz@oaklandca.gov. Allow three working days for approval to access bid documents through iSupplier.

Without proper registration, your firm may not be receiving notifications from iSupplier regarding contracting opportunities. We recommend updating your firm's primary email contact regularly and confirming the “Products and Services” section of your profile is correctly filled out. For further information, refer to these [detailed iSupplier registration instructions](#).

The iSupplier system assigns a unique “Request for Quotation” tracking/reference number and a three-page introductory document to each contracting opportunity (construction bid or RFP). These front-end documents are for reference only and need not be submitted at any time.

4. Public Records Act or Sunshine Ordinance:

All submittals become the property of the City. Label individual pages as "confidential" or "proprietary" information to indicate the desire to withhold financial and proprietary information.

Although a document labeled "confidential" or "proprietary", the information may still be subject to disclosure under the Public Records Act or Sunshine Ordinance, and is, at the City's discretion, based on the potential impact of the public's interest, whether or not to disclose "confidential" or "proprietary" information.

5. Rejection of Submittal Elements:

The RFQ does not commit the City to award an agreement or to pay any cost incurred in the preparation of the submittal. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFQ and/or RFQ process, to reject any or all submittals, whether or not minimum qualifications are met, and to modify, postpone, or cancel the RFP without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to waive any defects as to form or content of the RFP or any responses by any consultant teams and to request and obtain additional information from any candidate submitting a submittal. **Furthermore, a submittal RISKS BEING REJECTED for any of the following reasons:**

- Submittal received after designated time and date.
- Submittal received at other than the designated location.
- Submittal not in compliance with the City of Oakland Local/Small Local Business Enterprise Program.
- Submittal not containing the required elements or exhibits, or not organized in the required format.
- Submittal containing excess or extraneous material not called for in the RFP/RFQ.
- Submittal considered not fully responsive to this RFP/RFQ.

6. Sample Professional Services Agreement:

Consultants are advised to review the sample Professional Services Agreement. (see Appendices) Consultants will be required to execute this agreement and the City is not inclined to make any modifications to its terms and conditions. The consultant's Submittal shall be considered to demonstrate the consultant's understanding and acceptance of the terms of the agreement.

7. Insurance Requirements:

The awarded consultant will be required to provide proof of insurance in accordance with **Schedule Q** prior to execution of a contract. (see Appendices)

8. Business Tax Certificate:
The consultant awarded this contract shall obtain or provide proof of having a current City of Oakland Business Tax Certificate prior to contract execution.
9. Non-Discrimination/Equal Employment Practices:
Consultant 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 contract, Consultant agrees as follows:
 - a. The consultant and its subconsultants shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The consultant and its subconsultants shall state in all solicitations or advertisements for employees placed by or on behalf of the consultant that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
 - c. If applicable, the consultant will send to each labor union or representative of workers with whom consultant has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of consultant's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. All affirmative action efforts of consultants are subject to tracking by the City. The information or data shall be used for statistical purposes only. All consultants are required to provide data regarding the make-up of their subconsultants who will perform City contracts, including the race and gender of each employee and/or subconsultant and his or her job title or function and the methodology used by the consultant to hire and/or contract with the individual or entity in question.
 - e. In the recruitment of subconsultants, the City requires all consultants 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 minority and women-owned business utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual

preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), or disability.

- f. The City will immediately report evidence or instances of apparent discrimination in City contracts to the appropriate State and Federal agencies, and will take action against consultants who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.

10. Local and Small Local Business Enterprise Program (L/SLBE):

This section has been modified for professional services agreements. The full program document is available at: <https://www.oaklandca.gov/documents/local-small-local-business-enterprise-program>

Requirement – There is a 50% minimum participation requirement for all consultant agreements over \$50,000. Prime consultant/subconsultant status as an Oakland certified local or small local business enterprise are taken into account in the calculation.

- a. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local business enterprises (LBEs) that apply for consultant agreements as the prime consultant. The SLBE requirements still applies for non-certified and non-local business enterprises.
- b. Preference Points (for professional agreements only): Proposers earn preference points based on the proposed level of participation prior to the award of a contract.
 - i. Two (2) preference points upon satisfying the minimum 50% requirement; and
 - ii. Three (3) additional preference points may be earned at a rate of one (1) point per additional 10% participation, up to 80% participation of the total contract dollars spent with L/SLBE firms.
- c. For professional service agreements only, proposers may earn up to five (5) preference points for local Oakland certified business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- d. For professional service agreements, only, additional preference points may be earned for having an Oakland resident workforce by submitting a completed Schedule E-2.

- e. Oakland Workforce Verification form, either at the time of the submittal or within 4 business days after the submittal due date and time. Only prime consultants seeking additional preference points are required to submit Schedule E-2.
- f. For construction projects and professional agreements, in those instances where Very Small Local Business Enterprise (VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.
- g. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a copy of the final progress payment application.
- h. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The RFP consultant evaluation process allows for additional preference points over and above the number of points earned for technical expertise. Typically, 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- i. Joint Venture and Mentor Protégé Agreements. If a prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the Joint Venture or Mentor-Protégé 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 Office of the City Administrator, Department of Contracts and Compliance, prior to the project bid date for construction, and by submittal due date for professional services. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- j. Consultants shall submit information concerning the ownership and workforce composition of their firm as well as its subconsultants, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire.
- k. All affirmative action efforts of consultants are subject to tracking by the City. This information or data shall be used for statistical purposes only. All prime consultants are required to provide data regarding the make-up of their subconsultants and agents who will perform City contracts, including the race and gender of each employee and/or contractor/consultant and his or her job title or function and the methodology used by the consultant to hire and/or contract with the individual or entity in question.

1. In the recruitment, hiring and retention of employees or subconsultants, the City of Oakland requires all prime consultants 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 based on age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. The consultant shall complete the combined Schedule C-1, P, U, V - Declaration of Compliance with Americans with Disabilities Act, Nuclear Free Zone Disclosure, Compliance Commitment Agreement, and Affidavit of Non-Disciplinary or Investigatory Action.

11. Prompt Payment Ordinance OMC Section 2.06.070

The Ordinance requires that consultant and its subconsultants shall pay undisputed invoices of their subconsultants for goods and/or services within twenty (20) business days of submission of invoices, unless specific exemptions apply, or unless the Consultant or its subconsultants notify the City's Prompt Payment Liaison in writing within five (5) business days that there is a bona fide dispute between the consultant or its subconsultant and claimant. In this case the Consultant or its subconsultant may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the Liaison upon the filing of a compliant. Consultant or its subconsultants 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 Consultant or its subconsultant fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

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

Consultant and its subconsultants shall include the same or similar provisions as those set forth above in this section in any contract with a consultant or subconsultant that delivers goods and/or services pursuant to or about a City of Oakland purchase contract.

Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

12. Violation of Federal, State, City/Agency Laws, Programs or Policies

The City may, in their sole discretion, consider violations of any programs and policies described or referenced in this section a material breach and may take enforcement action provided under the law, programs or policies, and/or terminate the contract, debar consultants from further contracts with City and/or take any other action or invoke any other remedy available under law or equity.

13. Conflict of Interest / Confidentiality

Consultant shall avoid all conflicts of interest and respect its relationship with the City by maintaining confidentiality of materials deemed confidential by law. Consultant specifically agrees to the following:

- a. Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this project. Without limitation, the consultant represents to and agrees with the City that no conflict of interest is created between providing the City services hereunder and any interest consultant may have with respect to any other person or entity (including but not limited to any federal or state regulatory agency) which has any interest adverse or potentially adverse to the City.
- b. Consultant understands and agrees to successfully provide the services requested by the project. In addition, every communication between the consultant and the City or its special counsel shall be a confidential communication between client and lawyer (see California Evidence Code Section 952), and the confidential work product of the City Administrator, City Attorney and the City's special counsel, respectively, and therefore shall be held in strict confidence. All reports, analysis, maps, diagrams or any documents prepared or assisted in the preparation of or by the consultant, shall be prepared pursuant to said lawyer-client relationship. All the above-mentioned documents are also considered the work product of the City Administrator and shall not be communicated to any person except as specifically authorized in writing signed by the City Administrator and City Attorney.

- c. The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service providers' firm, or any immediate family of the preceding, or any subconsultant or consultant of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a consultant such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFPs/RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

With exception of Schedules E, E-2 and O, all other Schedules referenced below will be provided and required during the contract execution process as they are not required now. These Schedules, policies, programs, and ordinances referenced in this section are available at: <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-andschedules>

14. Arizona and Arizona-Based Businesses - Schedule B-1

In accordance with Resolution No. 82727 C.M.S., the consultant agrees that 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.

The consultant acknowledges its duty to notify Contracts and Compliance Division, Office of the City Administrator, 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 contract or agreement.

15. Declaration of Compliance with the Americans With Disabilities Act – Schedule C-1

The consultant shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing this schedule.

16. Ownership, Ethnicity and Gender Questionnaire – Schedule D

The consultant shall submit information concerning the ownership and workforce composition of its firm.

17. Pending Dispute Disclosure Policy - Schedule K

All entities are required to disclose pending disputes with the City of Oakland when they submit bids, submittals or applications for a City or Agency contract or transaction involving:

- the purchase of products, construction, non-professional or professional services;
- contracts with concessionaires, facility or program operators or managers;
- contracts with project developers, including Disposition and Development Agreements, Lease Disposition and Development Agreements and other participation agreements;
- loans and grants; or
- acquisition, sale, lease or other conveyance of real property, excluding licenses for rights of entry or use of city facilities for a term less than thirty (30) consecutive calendar days.

The disclosure requirement applies to pending disputes on other City contracts or projects that: (1) have resulted in a claim or lawsuit against the City of Oakland, (2) could result in a new claim or new lawsuit against the City of Oakland, or 3) could result in a cross-complaint or any other action to make the City of Oakland a party to an existing lawsuit. “Claim” includes, but is not limited to, a pending administrative claim or a claim or demand for additional compensation.

Entities required to disclose under this Disclosure Policy include (1) any principal owner or partner, (2) any business entity with principal owners or partners that are owners or partners in a business entity, or any affiliate of such a business entity, that is involved in a pending dispute against the City of Oakland.

Failure to timely disclose pending disputes required by this policy may result in (1) a determination that a bid is non-responsive and non-responsible for price-based awards, or (2) non-consideration of a bid or submittal for a professional service contract or another qualification-based award. The City may elect to terminate contracts with entities that failed to timely disclose pending disputes and/or initiate debarment proceedings against such entities.

18. Consultant Performance Evaluation – Schedule L1

At the end of the project, the City Project Manager will evaluate the consultant’s performance in accordance with the Consultant Performance Evaluation form.

19. Consultant’s Qualifications - Schedule M, Part A Consultant represents that:

- a. Consultant has the qualifications and skills necessary to perform the services under this contract in a competent and professional manner without the advice or direction of the City; and
- b. The services will be performed in accordance with the generally accepted principles and practices applicable to consultant’s trade or profession; and

- c. Consultant and its employees and subconsultants 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 performance of the services; and
- d. all services provided pursuant to this contract shall comply with all applicable laws and regulations; and
- e. Consultant will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program.
- f. This means Consultant can fulfill the requirements of this contract. Failure to perform all the services required under this contract will constitute a material breach of the contract and may be cause for termination of the contract. Consultant has complete and sole discretion because the work under this contract is performed.

20. The City's Living Wage Ordinance – Schedule N

Professional contracts that involve services of licensed professionals, such as, but not limited to, architects and engineers, are subject to Oakland's Living Wage Ordinance, Oakland Municipal Code, Title 2, Chapter 2.28, where such services amount to or exceed \$25,000. The ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers contracted to provide services amounting to or exceeding \$25,000, shall provide certain minimum hourly wages and health benefits to employees. The City determines and adjusts the rates annually using the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor as the index. Prime consultants will be required to execute Schedule N during the contract execution process certifying their intent to comply with the Living Wage Ordinance for agreements equal to or greater than \$25,000.

21. Equal Benefits Ordinance - Schedule N-1

This contract is subject to the Equal Benefits Ordinance of Chapter 2.32 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 to prohibit discrimination in the provision of employee benefits by City-hired consultants 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 consultants are subject to the Equal Benefits Ordinance:

- a. Entities which enter 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
- b. Entities which enter 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.

- c. The Ordinance shall only apply to those portions of a consultant's operations that:
- d. occur within the City; and
- e. 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 consultant's presence at that location is connected to a contract with the City; and
- f. 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 subconsultants. For more information, see

http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEOR.html#TOPTITLE

22. City of Oakland Campaign Contribution Limits – Schedule O

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 Campaign Reform Act prohibits consultants that are doing business or seeking to do business with the City 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 contract requires Council approval, the consultant must sign and date the Acknowledgment of Campaign Contribution Limits Form.

23. Nuclear Free Zone Disclosure - Schedule P

Consultant represents that consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers.

24. Compliance Commitment Agreement – Schedule U the Consultant shall comply with the L/SLBE program.

25. Affidavit of Non-Disciplinary or Investigatory Action – Schedule V

The Consultant shall certify that no disciplinary or investigatory action has been taken against its firm by the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, or Office of Federal Contract Compliance Programs.

26. Border Wall Prohibition - Schedule W

All vendors seeking to do business with the City of Oakland must complete and sign "Schedule W" as a statement of compliance with Ordinance 13459 C.M.S.

The purpose of the ordinance is to mandate and direct the City Administrator--in instances where there is no significant additional cost, to be defined in regulations, or conflict with law-- to refrain from entering into new or amended contracts to

purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials, or supplies to build the U.S.-Mexico border wall;

The City of Oakland shall be prohibited from entering any contractual agreement for the purchase of services, goods, equipment, *cyber network or cloud computing, internet, or cloud-based computer technology* or services with any "*BORDER WALL ENTITY*" individual, firm, or financial institution who provides any services, goods, equipment or information technology or cloud-based technology or services, to construction of a wall along any part of the United States- Mexico border.

V. Appendices

See the following pages.

END OF RFQ

APPENDIX A

Required Documents

Documents due with Submittal

- [Schedule E](#) – Consultant Team Listing
- [Schedule E-2](#) – Oakland Workforce Verification (if applicable – See Section 4.10e)
- [Schedule O](#) – Campaign Contribution Limits
- [Schedule W](#) – Border Wall Prohibition
- Addenda Acknowledgement – If any are issued, you must acknowledge all addenda received by including a statement in your transmittal letter, or by returning signed addenda with the proposal.

Documents required during contract execution phase

- [Combined City Schedules](#) B-1, C-1, D, K, M, N, N-1, P, U, V

Document required during close out of project

- [Schedule L1](#) – Consultant Evaluation

APPENDIX B

Sample Agreement

SAMPLE

(AS-NEEDED?) PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
Name of Contractor

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered as of Month Date, Year between the City of Oakland, a municipal corporation, (“City”), One Frank H. Ogawa Plaza, Oakland, California 94612, and Name of Contractor (“Contractor”)

2. Scope of Services

Contractor agrees to perform the services specified in **Schedule A**, Scope of Services attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. **Schedule A** includes the manner of payment. The Project Manager for the City shall be Project Manager.

3. Time of Performance

Contractor’s services shall begin on Month Date, Year and shall be completed Month Date, Year. (*Options to renew and/or other conditions to afford maximum flexibility to receive quality deliverables?*)

4. Compensation and Method of Payment

Contractor will be paid for performance of the scope of services an amount that will be based upon actual costs but that will be “Capped” so as not to exceed \$Amount, based upon the scope of services in **Schedule A** and the budget by deliverable task and billing rates in **Schedule B**. The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Contractor’s actual costs exceed the Capped amount. Invoices shall state a description of the **deliverable** completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the contractor has earned during the period for which payment is being made, based on the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

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

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. The Contractor warrants that the Contractor, and the Contractor's employees and sub-consultants 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 Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor can fulfill the requirements of this Agreement. Failure to perform all the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion because the work under this Agreement is

performed. Prior to execution of this agreement, Contractor shall complete **Schedule M, Independent Contractor Questionnaire**, attached hereto.

c. Payment of Income Taxes

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

d. Non-Exclusive Relationship

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

e. Tools, Materials and Equipment

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

f. Cooperation of the City

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

g. Extra Work

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

6. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall

exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

7. Ownership of Results

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

8. Copyright

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

9. Audit

Contractor 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.

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

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

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, 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, the 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

Contractor 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 the 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 Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will refer 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 Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor 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 the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor 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. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Contractor 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, the Contractor 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, Contractor shall obtain approval by the City Council and City Administrator 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 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q, Insurance Requirements**. **Schedule Q** is attached at the end of this sample agreement and incorporated herein by reference.

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor 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 Contractor's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act during performance by Contractor under this Agreement;
 - (iii) Negligent or willful acts or omissions during performance by Contractor under this Agreement;
 - (iv) 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 Contractor;
 - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
 - (vi) Claim of infringement or 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 "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, 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 Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues always thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor'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 Contractor's obligations under this Section 15 are intended to apply fully 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 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 Contractor 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 for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor because of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

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, the Contractor 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 the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Division of Contracts and Compliance upon the filing of a complaint. Contractor or 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 Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor 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. Contractor 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 posting on the City's website, Contractor 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, Contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following 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 a prime contractor 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 prime Contractor 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 the prime contractor 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.

Contractor and its 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 about this City of Oakland purchase contract.

Prompt Payment invoice and claim forms are available at the following City of Oakland website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandnet.com.

18. Arizona and Arizona-Based Businesses

Contractor 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.

Contractor acknowledges its duty to notify the Purchasing Department 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.

19. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland 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. Contractor agrees to disclose, and has disclosed, 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.

20. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on **Month Date, Year**.

21. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$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 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government

Code Section 87100 et seq.) and it's implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether Contractor is responsible for the conflict of interest situation.

22. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of 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 nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to 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. Contractor 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 Americans with Disabilities Act**, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

23. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are considered in the calculation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s). A business must be certified by the City of Oakland to earn credit toward meeting the fifty percent requirement. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies for non-certified LBEs and non-local business enterprises.
- b. Good Faith Effort - Considering the fifty percent requirement, good faith effort documentation is not necessary.
- c. Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional

preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.

- d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e. In those instances, where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.
- f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts
- g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically, 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F, Exit Report and Affidavit** for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
- i. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant can 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 Office of the City Administrator, Contracts and Compliance Unit, 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.
- j. Contractor shall submit information concerning the ownership and workforce composition of Contractor’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 a part of this Agreement.

- k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination based on age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

24. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor 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 (consultants) 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 specific exemptions apply or a waiver is granted, the consultant 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, contractor shall pay adjusted wage rate.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.87 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.

25. 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.

Oakland employers are subject to Oakland's Minimum Wage Law whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site. The law requires paid sick leave for employees and payment of service charges collected for their services.

For further information, please go to the following website:

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

26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 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 to prohibit discrimination in the provision of employee benefits by City contractors (consultants) 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 contractors 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 contractor'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 Council approval. The City of Oakland Campaign Reform Act prohibits contractors that 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, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

28. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P, Nuclear Free Zone Disclosure Form**, that Contractor follows the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor 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 about the performance of the Agreement.

31. Business Tax Certificate

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

Should the project or any portion thereof be abandoned, the City shall pay the Contractor 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 it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

34. Governing Law

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

35. Notice

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)
Agency/Department
Address
Oakland, CA
Attn: Project Manager

Name of Contractor
Address
City State Zip
Attn: Project Manager

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

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 Contractor for the City and contains all 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 parties, which are 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 a 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 situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a 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 Contractor 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 Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

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

Within thirty (30) days of completion of the performance under this Agreement, the Contractor shall decide of all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations all claims relating to or arising from this Agreement) to the City. Failure of the Contractor 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 Contractor.

41. Approval

If the terms of this Agreement are acceptable to Contractor 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

Name of Contractor

(City Administrator's Office) (Date)

(Signature) (Date)

(Agency Director's Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Date of Expiration

(City Attorney's Office Signature) (Date)

Resolution Number

Accounting Number

END OF SAMPLE PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

Schedule Q – Professional Services Insurance Requirements

Schedule Q

INSURANCE REQUIREMENTS

(Revised 01/13/17)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and nonowned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions

of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/ Errors and Omissions insurance, if determined to be required by HRM/RBD**, appropriate to the contractor's profession with limits not less than \$_____ each claim and \$_____ aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

- v. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than \$500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of \$500,000 per occurrence and in the aggregate.

- vi. **Sexual/Abuse insurance.** If Contractor will have contact with persons under the age of 18 years, or Contractor is the provider of services to persons with Alzheimer's or Dementia, Contractor shall maintain sexual/abuse/molestation insurance with a limit of not less than \$1,000,000 each occurrence. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers,

agents, employees and volunteers as insured's under the Commercial General Liability policy. 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 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
 - iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
 - iv. The Workers' 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; and
 - v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
 - vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.
- c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

- d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, 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.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.