

SAMPLE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) MASTER
PROFESSIONAL ARCHITECTUAL AND ENGINEERING SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
Name of Consultant

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 into as of (month) (day), (year), between the City of Oakland, a municipal corporation, (“City”), One Frank H. Ogawa Plaza, Oakland, California 94612, and Name of Consultant (“Consultant”)

2. Scope of Services

Consultant agrees to perform the services specified in **Schedule A**, Scope of Work, attached to this Agreement and incorporated herein by reference. Consultant 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 Name of Project Manager

3. Time of Performance

Consultant’s services shall begin on (month) (day), (year), and shall be completed by (month) (day), (year).

4. Compensation and Method of Payment

[NOTE: The 1st paragraph and preferred method, a not to exceed amount with a cap, is written to assure that the City does not pay more than the Consultant’s actual costs, and in no event more than the cap even though the Consultant’s actual costs may exceed the cap. Other methods may be used as appropriate, as in the

2nd paragraph, a Lump sum or Deliverables-based firm-fixed price for the total project, in which the Consultant is paid a set amount regardless of the costs actually incurred; or, as in the

3rd paragraph, Time & Materials, which provides for payment at an hourly rate plus cost reimbursement, with a ceiling on the total project or contract amount, with the Consultant being able to stop work (and not complete the project) once the contract amount is reached.

Select the appropriate paragraph. Contact the City Attorney if you are not sure which compensation paragraph applies to your contract. Delete the other two paragraphs that are not in use.]

Consultant 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 \$_____, based upon the scope of services in **Schedule A** and the budget by deliverable task and billing rates in **Schedule A**. The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Consultant’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.

OR

Consultant will be paid for performance of the entire scope of work set forth in **Schedule A** an amount not to exceed \$_____. Payment(s) of the **fee(s) or lump sum(s)** stated in **Schedule A** for each of the **deliverables**, shall be due upon completion and acceptance of each of the **deliverables**, at which time Consultant shall submit an invoice. Invoices shall state a description of the **deliverable** completed and the amount due.

OR

Consultant will be paid for performance of the entire scope of work set forth in **Schedule A** an amount not to exceed \$_____. Payment at the **rates** stated in **Schedule A**, shall be due upon completion and acceptance of the **services**, at which time Consultant shall submit an invoice. Invoices shall state a description of the **services** completed and the amount due.

[Note: Include the two paragraphs below in all contracts.]

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 Consultant has earned during the period for which payment is being made, on the basis of 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 Consultant

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent Consultant, and is not an

employee of the City. Consultant 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 Consultant in the performance of Consultant's services hereunder. Consultant 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 Consultant's own acts and those of Consultant's subordinates and employees. Consultant will determine the method, details and means of performing the services described in **Schedule A**.

b. Consultant's Qualifications

Consultant represents that Consultant 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. Consultant's services will be performed in accordance with the generally accepted principles and practices applicable to Consultant's trade or profession. The Consultant warrants that the Consultant, and the Consultant'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 Consultant's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Consultant will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Consultant is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Consultant has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Consultant shall complete **Schedule M, Independent Consultant Questionnaire, Part A**, attached hereto.

c. Payment of Income Taxes

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

d. Non-Exclusive Relationship

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

e. Tools, Materials and Equipment

Consultant 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 Consultant necessary to the performance of Consultant's duties under this Agreement.

g. Extra Work

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

6. Proprietary of Confidential Information of the City

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant 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. Consultant agrees that all information disclosed by the City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information, as a reasonably prudent Consultant would use to protect its own proprietary data.

7. Ownership of Results

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

8. Copyright

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

9. Audit

Consultant 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.

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

In addition to the above, consultant agrees to comply with all audits, inspection, record-keeping and fiscal reporting requirements.

Pre-award audit on Contracts \$1 million or more:

Consultant contracts \$1 million or more require a pre-award audit. The pre-award audit examines the consultant's accounting, estimating, administrative systems, proposed costs, financial condition, and the proposed contract language. The audit is as broad in scope as necessary to meet the objectives found in Exhibit 10-M "Standard Audit Program Procedures" in this chapter. An audit is also required under the following situations:

- Accumulative amendments that increase the total amount of the contract to \$1 million or more regardless of the number of amendments.
- Any single amendment \$1 million or more.
- Any subcontract \$1 million or more.

Procedures to perform the pre-award audit will depend on who the local agency selects to perform the audit. The local agency may perform the pre-award audit with their own personnel; employ a Certified Public Accountant (CPA) to perform the pre-award audit; or request Caltrans to perform the pre-award audit.

10. Agents/Brokers

Consultant warrants that Consultant has not employed or retained any subconsultant, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any subconsultant, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, 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

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

City staff will be available whenever possible at the request of consultant to assist consultant in generating publicity for the project funded pursuant to this Agreement. Consultant 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 consultant 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. Consultant 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 consultant shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, consultant 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, Consultant must provide the insurance listed in **Schedule Q, Insurance Requirements**. **Schedule Q** is attached and incorporated herein by reference.

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, consultant will indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmember's, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitees") 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) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.
- b. City will give consultant prompt written notice of any such claim of loss or damage and will cooperate with Consultant, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- c. Notwithstanding the foregoing, City shall have the right if Consultant 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 consultant in the amount of anticipated defense costs plus

additional reasonable amounts as security for Consultant's obligations under this Section 15. In no event shall Consultant agree to the settlement of any claim described herein without the prior written consent of City.

- d. Consultant acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend indemnitees from any actions or claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, which obligation shall arise at the time any action or claim is tendered to Consultant by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any indemnitees.
- e. All of Consultant's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8) and shall survive the expiration or sooner termination of this Agreement.
- f. 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 Consultant 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 consultant by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Consultant.

17. Arizona and Arizona-Based Businesses

In accordance with Resolution No. 82727 C.M.S. neither this business entity nor any of its subsidiaries, affiliates or agents are headquarters in the State of Arizona or anticipates relocating to the State of Arizona duration for the life of its contract(s) with the City of Oakland or until Arizona rescinds SB 1070.

Consultant acknowledges its duty to notify the Office of the City Administrator, Contracts and Compliance Unit 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.

18. Dispute Disclosure

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

19. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to consultant. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on (month) (day), (year).

20. Conflict of Interest

a. Consultant

The following protections against conflict of interest will be upheld:

- i. Consultant 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. Consultant 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. Consultant 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 Consultant.
- iv. Consultant 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. Consultant shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Consultant further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Consultant 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 Consultant 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. Consultant agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Consultant understands that in some cases Consultant or persons associated with Consultant 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. Consultant further understands that, as a public officer or official, Consultant or persons associated with Consultant may be disqualified from future City contracts to the extent that Consultant 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. Consultant 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, Consultant understands and agrees that, if the City reasonably determines that Consultant 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 Consultant to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Consultant is responsible for the conflict of interest situation.

21. 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 Agreement, Consultant agrees as follows:

- a. Consultant and Consultant's subconsultants, 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. Consultant and consultant's subconsultants shall state in all solicitations or advertisements for employees placed by or on behalf of Consultant 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. 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 **Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act**, attached hereto and incorporated herein.
- d. If applicable, 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.

22. Underutilized Disadvantaged Business Enterprise (UDBE) Program

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds comply with the DBE program, and that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms.

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and shall take all necessary and reasonable steps for such assurance.

Consultants must give consideration to DBE firms specified in 23 CFR 172.5(b), 49CFR, Part 26 and in Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information. If the contract has an underutilized DBE (UDBE) goal, the consultant must meet the UDBE goal by using DBEs as sub consultants or document a good faith effort to meet the goal. If a UDBE sub consultant is unable to perform, the consultant must make

a good faith effort to replace him/her with another UDBE sub consultant if the goal is not otherwise met.

Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants. Use Exhibit 10-J, Standard Agreement for Subcontractor/DBE participation as a guide.

- a. Consultant shall submit information concerning the ownership and workforce composition of Consultant's firm as well as its subconsultants and suppliers, by completing **Schedule D** ("Professional Services Questionnaire"), and **Schedule E** ("Project Consultant Team") attached and incorporated herein and made a part of this Agreement.
- b. All affirmative action efforts of Consultant are subject to tracking by the City. This information or data shall be used for statistical purposes only. All 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 consultant and his or her job title or function and the methodology used by consultant to hire and/or contract with the individual or entity in question.
- c. In the recruitment of subconsultants, the City of Oakland 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 Business Enterprise/ Women Business Enterprise (MBE/WBE) 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 and reports quarterly as requested to the City.
- d. Good Faith Effort – Good faith efforts shall be documented and verified (Exhibit 15-H "UDBE Information-Good Faith Efforts," form).
- e. Joint Venture and Mentor Protégé Agreements. If a prime Consultant or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified DBE or UDBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order 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.
- f. In the use of such recruitment, hiring and retention of employees or subconsultants, the City of Oakland requires all consultants to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

23. Prompt Payment

No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or sub consultants from progress payments due sub consultants shall be promptly paid in full to sub consultants within 30

days after the sub consultant's work is satisfactorily completed. Federal law (49CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or sub consultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or sub consultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient sub consultant performance, or noncompliance by a sub consultant. This provision applies to both DBE and non-DBE prime consultant and sub consultants.

24. Reporting DBE Participation

DBE language must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. The "Notice to Proposers Disadvantaged Business Enterprise Information" (Exhibit 10-I, of the LAPM) is to be included in all consultant contracts with federal-aid funds. In addition, certain DBE contract clauses must be included in the consultant contract.

25. Reporting DBE Commitments And DBE Information

For contracts with DBE goals:

The "Local Agency Proposer DBE Commitment (Consultant Contracts)" (Exhibit 10-O1) included in the proposal package and provided by each proposer must be incorporated within this agreement.

The "Local Agency Proposer DBE Information (Consultant Contracts)" (Exhibit 10-O2) also included in the proposal package and provided by each proposer must be incorporated within this agreement.

For contracts with no DBE contract goal, Exhibit 10-O2 shall be included in the proposal package and provided by each proposer. The purpose of including this form is to capture all DBE participation, including DBE participation that was acquired through normal contracting procedures (i.e., no goal was placed on the contract).

26. Reporting DBE Final Utilization (Contracts with or without goals)

Upon completion of the contract, regardless of whether DBE participation is obtained, a summary of the DBE final utilization shall be prepared, certified correct, and submitted on the form "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Sub-consultants" (Exhibit 17-F, of the LAPM) or equivalent by the Consultant to the local agency showing total dollars paid to each sub-consultant and supplier whether DBE, or non-DBE. Exhibit 17-F is reviewed by the City of Oakland and certified as complete and accurate.

27. Federal Debarment and Suspension Certification

With their proposals, proposers are required to certify that they have not been suspended or debarred from participating in federally-funded procurement activities. This requirement applies to consultant contracts exceeding \$100,000. Consultants shall submit the enclosed Certification A form, Debarment and Suspension Certification with their proposal.

28. Federal Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

Subcontractor/Sub-consultants are required to certify that they have not been suspended or debarred from participating in federally-funded procurement activities. This requirement applies to consultant contracts exceeding \$100,000. Bidders/Proposers shall submit the enclosed Certification B form, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion –Lower Tier Covered Transaction with their proposal.

29. Nonlobbying Certification for Federal-aid Contracts (Exhibit 10-P)

The prospective participant certifies, by submitting this proposal, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The prospective participant also agrees by submitting his or her proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

30. Other DBE Forms and Exhibits

Disclosure of Lobbying Activities, Standard Form and Instructions (Exhibit 10-Q, LAPM): This form is to disclose any lobbying activities.

DBE Certification Status Change (Exhibit 17-O): This form shall be completed, signed, and submitted to the City with the final report of expenditures for consultant contracts. If no change, state so.

Consultant Performance Evaluation Report (Exhibit 10-S): The purpose of this form is to provide historical data to Agency staff when selecting consultants

31. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Consultant 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 Consultants (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, Declaration of Compliance – Living Wage**, 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 \$12.27 with health benefits or \$14.10 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, Consultant shall pay adjusted wage rates.**
- 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 **\$1.83 per hour**. Consultant 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.

For further information you may visit

<http://www.irs.gov/individuals/article/0,,id=96406,00.html>

e. Consultant shall provide to all employees and to Contracts and Compliance Unit, 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. Consultant 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 – Consultant shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Consultant shall provide a copy of said list to Contracts and Compliance Unit, 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. Consultant shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

h. Consultant shall require subconsultants that provide services under or related to this Agreement to comply with the above Living Wage provisions. Consultant shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contracts and Compliance Unit.

32. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Consultants (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: 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 Consultant'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 subconsultants of any contract or Consultant

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

33. 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's Campaign Reform Act prohibits Consultants 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, Consultant must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**, Campaign Contributions.

34. Nuclear Free Zone Disclosure

Consultant represents, pursuant to **Schedule P**, Nuclear Free Zone Disclosure Form, that Consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Consultant shall complete **Schedule P**, attached hereto.

35. 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.

36. Religious Prohibition

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

37. Business Tax Certificate

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

38. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all or 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, Consultant shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Consultant 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 Consultant.

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

39. 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.

40. Governing Law

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

41. 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 Information)

City of Oakland
Address

Oakland, CA 94612-2033

Attn: Name of Project Manager

(Consultant Information)

Name of Company

Address

City, State and Zip

Attn: Contact Person Name

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.

42. Entire Agreement of the Parties

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

43. Modification

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

44. Severability/Partial Invalidity

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

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

45. Time of the Essence

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

46. Commencement, Completion and Close out

It shall be the responsibility of the Consultant 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 Consultant to enable Consultant 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 Consultant not complete the work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

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

47. Approval

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

48. 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 Company
(Consultant)

(City Administrator's Office) (Date)

(Signature) (Date)

Department Head

(Please Print Name of Agent)

(Agency Director's Signature) (Date)

Approved as to form and legality:

(Business Tax No.) (Date of Expiration)

Resolution Number

(City Attorney's Office Signature) (Date)

Accounting Number

**END OF SAMPLE DISADVANTAGED BUSINESS ENTERPRISE (DBE) MASTER
PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICE AGREEMENT**