



Barbara J. Parker, City Attorney

**CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY**

**SPECIFICATIONS, TERMS & CONDITIONS FOR
INVESTIGATIVE SERVICES**

Complete information regarding this RFP is posted at <http://www.oaklandcityattorney.org> and in iSupplier. A copy may also be obtained at the City of Oakland Office of the City Attorney, located at One Frank Ogawa Plaza, 6th floor, Oakland, California.

iSupplier Registration/Login:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/index.htm>. New registrants can email isupplier@oaklandnet.com for registration instructions. Allow 3 working days for approval to access bid documents through iSupplier

Contact Person: Mark Forte

Phone Number: (510) 238-2960

E-mail Address: mforte@oaklandcityattorney.org

RESPONSES TO THIS RFP ARE DUE BY: 2:00 p.m., November 4, 2016

Submittal Requirements

Submit six (6) copies of proposal. The proposals are due at the Contracts and Compliance Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Suite 3341, Oakland, CA 94612 no later than **2:00 p.m., November 4, 2016**

All proposals submitted via US Mail or Common Carrier must be delivered in a sealed package and must reference the project name and project number (if applicable), submittal date, time and location of the proposals on the outside of the package or the documents may not be accepted.

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The Combined Contract Schedules will be collected from the successful proposer before a final decision is made and up to full contract execution. It may be viewed at:
<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at 250 Frank H. Ogawa Plaza Suite 3341, Oakland, CA Contracts and Compliance Division. Also request a copy by email from isupplier@oaklandnet.com

INTRODUCTION

The City of Oakland Office of the City Attorney (OCA) seeks to contract with an experienced individual or firm to provide investigation services. Prospective contractors should have a demonstrated record of providing investigative services for public/government entities, particularly in police cases, Section 1983 cases and affirmative litigation. The ideal investigator is accessible, responsive, detail-oriented, dedicated to high ethical standards of professionalism and confidentiality, and capable of developing a cost effective investigation program. The information contained in this Request for Proposal (RFP) outlines the requested services. It contains the instructions governing the proposal to be submitted and the material to be included therein; mandatory requirements which must be met to be eligible for consideration; and other requirements to be met in each proposal.

The City Attorney's Office intends to award a one-year contract with an annual option to renew for 1, 2 or 3 year terms to the private investigator/investigation firm selected as most capable of meeting the City's requirements. At the end of the 4th year, the City Attorney's Office shall issue a new RFP. **Even those Contractors having current contracts with the City must respond to this RFP, and be selected, in order to continue their work for the City.**

PROJECT DESCRIPTION

- A. OCA is seeking to contract with a qualified and experienced individual or firm to perform a range of investigative work, including but not limited to:
 - Police cases (including Section 1983 matters);
 - Affirmative litigation matters;
 - Collections/enforcement of judgements;
 - Personnel/background checks/asset searches;
 - Location of witnesses.
- B. The contractor will work closely with the OCA Litigation, Affirmative Litigation, Innovation and Enforcement and Administrative Operations Divisions with respect to specific case direction and execution.
- C. This RFP is designed to provide basic information sufficient to solicit proposals from qualified individuals or firms but is not intended to limit a proposal's content or exclude any relevant, important or essential information.

SCHEDULE OF EVENTS:

- Distribution of RFP 10/14/2016
- Submission of RFP due 2:00 p.m. 11/4/2016
- Internal Proposal Review 11/7/2016 to 11/11/2016
- Candidate Interviews (to be determined)
- Contract Negotiations (to be determined)
- Contract Process Completed & Contract Awarded (to be determined)

(Dates subject to change)

INVESTIGATOR MINIMUM REQUIREMENTS:

1. The individual or firm must participate in the City's Professional Services Contract Program;
2. A minimum of five (5) years of recent experience in investigation, conducting interviews and report/analytical writing is required.
3. Investigator must possess all permits, licenses, and professional credentials necessary to perform services specified in this RFP.
4. The Investigator shall at all times have a proximate location to the City of Oakland conducive to the expedient investigation/administration of matters assigned.
5. Maintain sufficient resources, coverage and/or support to provide investigative services throughout the contract term.

SCOPE OF SERVICES

Under direction of the City Attorney's Office, the Investigator conducts a wide range of investigative duties such as: factual/evidentiary research, gathers and manages evidence through investigative processes; identifies and locates witnesses; conducts interviews; coordinates appearances of witnesses for court proceedings; researches information through computer data bases; processes and serves legal documents.

Specific Requirements and Responsibilities

The City Attorney requirements and responsibilities for its Investigator include, but are not limited to, the following:

1. Possess knowledge of and experience in principles, practices and techniques of conducting investigations related to civil and criminal litigation;
2. Have available at all times the equipment, facilities, and instrumentalities required to perform the services herein;
3. Ensure that only licensed investigators are provided for the contracted work;
4. Possess working knowledge of court procedures relevant criminal or civil laws and procedures;
5. Be set up to serve witnesses and others associated with investigations and advance fees, if necessary;
6. Use digital photography and videography;
7. Use of methods and techniques of online research via the internet and computer databases;
8. Possess knowledge of ordinances, codes, procedures and practices applicable to legal investigation, search and seizure;
9. Be aware of, and adhere to all provisions of law and professional/ethical codes applicable to investigations;
10. Communicate effectively both orally and in writing, including preparing reports of investigation;
11. Establish and maintain effective working relationships with witnesses, parties to investigations, police agencies and all others encountered in the course of work;

12. Gather, analyze and evaluate facts and evidence applicable to cases under investigation and make recommendations based on investigative findings;
13. Conduct civil and criminal background checks and asset searches;
14. Investigate accidents;
15. Conduct surveillance;
16. Testify in Court when needed.

On occasion the City Attorney's Office may require special services be provided on its premises. Should there be a need for such services the Investigator and the City Attorney will negotiate the cost for said services. Said costs will be independent of the annual Investigative Services contract fee and shall be paid as an individual expense.

THE PROPOSAL

General Information

- A. The individual or firm selected for this project shall obtain or provide proof of having a current City of Oakland Business License.
- B. The City Attorney reserves the right to reject any and all bids.
- C. Sample Professional Service Agreement

This Agreement is subject to the attached Sample Professional Service Agreement (Attachment A). Please note that the City Attorney's Office is typically not inclined to make any revisions to the standard agreement.

- D. The City's Local and Small Local Business Enterprise Program.

The L/SLBE program requirement has been waived for this project per Availability Analysis date 10/12/16

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 sub-Contractor/sub-consultant status as an Oakland certified local or small local firm are taken into account 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 in order 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.

Good Faith Effort - In light of the 50% requirement, good faith effort documentation is not necessary.

Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum 50% 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.

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.

In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.

Additional Preference Points for Request for Proposals (RFP) and Request for Qualifications (RFQ) may be earned for having an Oakland resident workforce. **Prime consultants seeking additional preference points for having an Oakland resident workforce must submit a completed Schedule E-2 titled the “Oakland Workforce Verification Form” no more than 4 days after the proposal due date. A copy of Schedule E-2 is found on**

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.

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.

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.

Joint Venture and Mentor Protégé Agreements - If a prime Contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. 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.

Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its sub-contractors 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.

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 sub-contractors 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 Contractor to hire and/or contract with the individual or entity in question.

In the recruitment of sub-contractors, 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 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.

In the use of such recruitment, hiring and retention of employees or sub-contractors, 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.

E. The City's Living Wage Ordinance

This Agreement is subject to 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 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 Declaration of Compliance – Living Wage Form; and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the Contractor must provide the following to its employees who perform services under or related to this Agreement:

1. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$12.93 with health benefits or \$14.86 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 rates.**

2. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$1.93 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.
3. 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.
4. 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 more information, web sites include but are not limited to: (1) <http://www.irs.gov> and <http://www.irs.gov/individuals/article/0,,id=96466,00.html>
5. Contractor shall provide to all employees and to 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.
6. 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.
7. 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 Office of the City Administrator, 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. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

8. Contractor shall require sub-contractors 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 sub-contracts. Copies of said sub-contracts shall be submitted to Contracts and Compliance.

F. 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.

For further information, please go to the following website:

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

G. 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 so as to prohibit discrimination in the provision of employee benefits by City Contractors (contractors) 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 sub-contractors.

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1, Equal Benefits-Declaration of Nondiscrimination form. For more information, see http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEO_R.html#TOPTITLE

- H. Prompt Pay Ordinance OMC Section 2.06.070 Prompt Payment Terms Required in Notices Inviting Bids, Requests for Proposals/Qualifications and Purchase Contracts

This Agreement is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply. Contractor and its sub-contractors shall pay undisputed invoices of their sub-contractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its sub-contractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its sub-Contractor and claimant, in which case the Contractor or its sub-Contractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractor or its sub-contractors 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 sub-Contractor 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 sub-contractors shall not be allowed to retain monies from sub-Contractor payments for goods as project retention, and are

required to release sub-Contractor project retention in proportion to the sub-Contractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its sub-contractors shall be required to pass on to and pay sub-contractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its sub-contractors, 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, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all sub-contractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all sub-contractors and the amount paid to each.

Contractor and its sub-contractors shall include the same or similar provisions as those set forth above in this section in any contract with a Contractor or sub-Contractor that delivers goods and/or services pursuant to or in connection with a 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/FormSchedules/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 Deborah Barnes, City of Oakland Prompt Payment Liaison, 510-238-6270 or email dbarnes@oaklandnet.com.

I. 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:

1. Contractor and Contractor's sub-contractors, if any, 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.
2. Contractor and Contractor's Sub-contractors 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 preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

3. 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 Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
4. 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.
5. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub-contractors and suppliers, by completing the Ownership, Ethnicity and Gender Questionnaire.
6. The Project Contractor Team attached and incorporated herein and made a part of this Agreement, Exit Report and Affidavit, attached and incorporated herein and made a part of this Agreement.
7. All affirmative action efforts of Contractors 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 sub-contractors 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.
8. The City will immediately report evidence or instances of apparent discrimination in City or Agency contracts to the appropriate State and Federal agencies, and will take action against Contractors 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.
9. In the recruitment of sub-contractors, 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 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.

10. In the use of such recruitment, hiring and retention of employees or sub- Contractors, 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

J. 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 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 agreement.

K. 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.

L. Nuclear Free Zone Disclosure

Contractor represents, pursuant to the combined form Nuclear Free Zone Disclosure Form that Contractor 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, Contractor shall complete the combined form, attached hereto.

M. Insurance Requirements

The Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of the 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 grounds for rescission of the contract award.

The Contractor shall name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insured in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance).

Please Note: A statement of additional insured endorsement on the ACORD insurance certificate is insufficient and will be rejected as proof of the additional insured requirement.

Unless a written waiver is obtained from the City's Risk Manager, Contractors must provide the insurance as found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormSchedules/index.htm> (Schedule Q). A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be provided in accordance with the requirements specified.

When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.

When providing the insurance, the "Certificate Holder" should be listed as: City of Oakland, Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

N. Violation Of Federal, State, City/Agency Laws, Programs Or Policies:

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

O. 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. Contractor's services will be performed in accordance with the generally accepted principles and practices applicable to Contractor's trade or profession. The Contractor warrants that the Contractor, and the Contractor's employees and sub-contractors 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 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. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete the Independent Contractor Questionnaire, Part A, attached hereto.

P. All responses to the RFP become the property of the City Attorney.

Q. The RFP does not commit the City Attorney to award a contract or to pay any cost incurred in the preparation of the proposal.

R. The City Attorney reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFP process.

S. The City Attorney reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFP and/or RFP process, to obtain further information from any and all Contractor teams and to waive any defects as to form or content of the RFP or any responses by any Contractor teams.

T. The City Attorney may require a service provider to participate in negotiations and submit technical information or other revisions to the service provider's qualifications as may result from negotiations.

U. Once a final award is made, all RFP responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City Attorney 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.

- V. 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 sub-Contractor or Contractor 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 Contractor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFPs, feasibility studies, master plans or preliminary discussions or negotiations.
- W. The following City staff are available to answer questions regarding this RFP:
- RFP and Project related issues:
Colin Bowen, Supervising Deputy City Attorney – (510) 238-6324
Maria Bee, Special Counsel – (510) 238-3814
Mark Forte, Administrative Analyst – (510) 238-2960
 - Contract Compliance and Administration:
Paula Peav – (510) 238-3190
Vivian Inman – (510) 238-6261
- X. The RFP does not commit the City to award a contract or to pay any cost incurred in the preparation of the proposal.

Submittal Requirements

Submit six (6) copies of proposal. The proposals are due at the Contracts and Compliance Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Suite 3341, Oakland, CA 94612 no later than **2:00 p.m., November 4, 2016.**

All proposals submitted via U.S. Mail or Common Carrier must be delivered in a sealed package and must reference the project name and project number (if applicable), submittal date, time and location of the proposals on the outside of the package or the documents may not be accepted.

Required Proposal Elements and Format

Format of Proposal

Contractors submitting a proposal to perform the services must follow the format prescribed below, including:

- Executive Summary
- Contractor Information and History
- Experience of Contractor and the Proposed Team Members
- Proposed Cost of Services
- References
- Required Exhibits

Executive Summary

This information must include specific activities/deliverables to be performed by Contractor and expectations of the City's role for the specific activity/deliverable. The proposal should, at a minimum, address each of the activities outlined under *SCOPE OF SERVICES*. If the Contractor believes additional activities should be included as part of the negotiation process, these additional activities should be included in the proposal as well. Project staffing should be geared so that it does not adversely affect the City of Oakland's current staffing levels or workload.

Contractor Information and History

Provide a brief background of your Contractor information including at a minimum:

- Name of incorporation, year founded
- Headquarters and satellite locations
- Number of employees currently employed
- Current strategic alliances

Please provide information that will enable us to evaluate your company's financial stability, growth history, and support capabilities. We require that you include the following: (1) Most recent audited financial statements; (2) Ownership of your company; (3) Number of years in business.

Experience of Contractor and the Proposed Team Members

The proposal must include a description of the Contractor's experience and knowledge of applicable services, applications, hardware, laws and regulations, customer service standards, needs assessment, etc. The proposal must indicate the prior experience of the Contractor in accomplishing these minimum requirements. The proposal must also include resumes of proposed team members, outlining member's knowledge and experience in performing requested services.

- A. Give a brief history of your firm since inception, including:
 - 1. A list of principals
 - 2. On organizational chart
 - 3. Size and location(s) of your firm, including numbers of employees at each location
 - 4. A description of the types of services provided by your firm and the number of years provided, and
 - 5. The contact person(s) for this RFP process.
- B. Discuss any major changes in your firm's structure or ownership over the past three years. Discuss anticipated changes in your firm's structure or ownership in the next three years.
- C. Discuss your firm's affiliation, if any, with a parent firm.
- D. Describe your firm's mission and goals as related to corporate growth, customer service, quality assurance/quality control management and affirmative action standards.
- E. Describe the number and types of clients your firm currently provides Contractor services to, both corporately and locally. Please list all public agency clients with 2,500 or more employees and the number of years served. Provide contact name and phone number for each.
- F. Provide information regarding any contracts which have been terminated within the past 36 months with an explanation of the termination.

About The Investigators Assigned to this Contract

- A. Explain your firm's current policies regarding the assignment of investigations to each investigator.
- B. Please submit your firm's Investigation Guidelines that are relevant to the Scope of Services.
- C. Discuss your interaction with clients in reporting on account management or investigation related issues.
 1. How frequently do you expect investigators to initiate contact with City Attorney's Office?
 2. What is your protocol regarding returning telephone and/or E-Mail messages?

Proposed Cost of Services

The City Attorney's Office requests all firms provide a response to two of the three cost of services options:

Option 1:

- **Flat Rate per Matter (Including Expenses):** Provide a flat rate per investigative matter. The flat rate for each investigative matter shall include all office overhead, auto expenses, communications expense, stenographic/clerical, witness and other fees

Option 2:

- **Flat Monthly Rate:** Provide a flat monthly rate to cover all work done during the month, including all office overhead, auto expenses, communications expense, stenographic/clerical, and fees. Witness fees paid should be shown as a separate expense and billed as incurred.

Option 3:

- **Time and Expense:** Provide an hourly rate for all work done during the month that includes all office overhead, auto expenses, communications expense, stenographic/clerical, and fees. Witness fees paid should be shown as a separate expense and billed as incurred.

References

Contractor shall provide a list of jurisdictions/municipalities/government agencies or corporations in which the Contractor has provided Investigative services. The name of the jurisdictions/municipalities/government agencies or corporations along with a point of contact, including telephone numbers, must be provided for each reference.

Public Sector experience is highly desirable.

Required Exhibits

Submit all of the following documents with your proposal.

1. Schedule E – Project Consultant Team Listing
2. Schedule O – Contractor Acknowledgement of City of Oakland Campaign Contribution Limits for Construction, Professional Services & Procurement Contracts

Forms to Be Submitted at Later Stage

Must be submitted prior to full contract execution

1. Combined Contract Schedules Form: Schedule B-2 & C-1; Schedule D; Schedule K; Schedule M; Schedule N; Schedule N-1; Schedule P; Schedule U and Schedule V
2. Schedule Q - Insurance Requirements (form is informational only, but proof of coverage must be submitted)

Rejection of Proposal Elements

The City reserves the right to reject any or all proposals, whether or not minimum qualifications are met, and to modify, postpone, or cancel the RFP/RFQ without liability, obligation, or commitment to any party, firm, or organization. In addition, the City reserves the right to request and obtain additional information from any candidate submitting a proposal. **Furthermore, a proposal RISKS BEING REJECTED for any of the following reasons:**

- Proposal received after designated time and date.
- Proposal does not contain the required elements, exhibits, nor not organized in the required format.
- Proposal considered not fully responsive to this RFP.
- Proposal contains excess or extraneous material not called for in the RFP.

EVALUATION PROCESS

Evaluation of Proposals

Proposals will be evaluated based on the demonstrated experience, qualifications, approach and responsiveness to the RFP. The top candidates based on the initial evaluation of the proposals will be invited for an in-person interview to present their proposal and respond to questions from the panel.

CONTRACT NEGOTIATIONS & AWARD

Contract Negotiations

- A. The completion of this evaluation process will result in the Contractor being numerically ranked. The Contractor ranked first will be invited to participate in contract negotiations. Should the City and the first ranked Contractor not be able to reach an agreement as to the contract terms within a reasonable timeframe, the City may terminate the negotiations and begin negotiations with the Contractor that is next in line, and proceed down the list as necessary until an agreement is reached or the list is exhausted.
- B. The contract amount (including reimbursables) shall be a not to exceed amount, to be established based upon a mutually agreeable Scope of Services and fee Schedule.
- C. The City will withhold the final 10% of contract amount pending successful completion of work.

Contract Award

- A. A sample City standard professional services agreement is included in the RFP as referenced as Attachment A - Sample Agreement. The selected Contractor will be required to enter into a contract that contains similar terms and conditions as in the standard agreement. Please note that the City Attorney's Office is typically not inclined to make any modifications to the standard agreement terms and provisions.
- B. Upon authorization to award the contract by the City Council and completion of necessary documents, the City will issue a Notice to the team to proceed.
- C. The selected Contractor and its other members will be required to maintain auditable records, documents, and papers for inspection by authorized local, state and federal representatives. Therefore, the Contractor and its other members may be required to undergo an evaluation to demonstrate that the Contractor uses recognized accounting and financial procedures.

GLOSSARY

Term	Definition – For Purposes of this RFP
ADA	American Disabilities Act
Council	Shall refer to the Oakland City Council
OCA	Office of the City Attorney
City	When capitalized, shall refer to the City of Oakland
Proposal	Shall mean Contractor response to this RFP
Request for Proposal	Shall mean this document, which is the Office of the City Attorney’s request for Contractor - Contractor’s proposal to provide the services being solicited herein. Also referred herein as RFP
Response	Shall refer to bidders’ proposal submitted in reply to RFP
RFP	Request for Proposal
RMD	Risk Management Division
Contractor	Third Party Administrator

LIST OF ATTACHMENTS

A. Sample Professional Services Agreement

B. Forms (Required with submission)

<http://cces.oaklandnet.com/ContComp/FormsSchedules.asp>

1. Project Consultant Team – Schedule E
2. Campaign Contribution Limits – Schedule O

C. Forms to Be Submitted at Later Stages

NOTE: Must submitted prior to full contract execution

1. Combined Form: Declaration of Compliance with Americans with Disabilities Act, Nuclear Free Zone Disclosure; Compliance Commitment Agreement; Affidavit of Non-Disciplinary or Investigatory Action
2. Independent Consultant Questionnaire, Parts A
3. Insurance Requirement (form is informational only, but proof of compliance must be submitted) – Schedule Q

ATTACHMENT A: SAMPLE PROFESSIONAL SERVICES AGREEMENT

BETWEEN CITY OF OAKLAND

AND

CONSULTANT NAME

Whereas, the Oakland City Charter authorizes the City Attorney to retain special legal counsel and technical and professional experts and consultants pursuant to Article IV of the Oakland City Charter; and

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

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

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of **DATE** between the City of Oakland, a municipal corporation, (hereinafter "City") One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612 and **CONSULTANT NAME** (hereinafter "Consultant").

2. Scope of Services

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

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

3. Time of Performance

This agreement is for the fiscal year, beginning DATE through DATE.

4. Compensation and Method of Payment and Payment of Expenses

Consultant will be paid for performance in an amount based on actual costs but that will be "capped" so as not to exceed the amount agreed upon per the Scope of Services/Retention

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

5. Independent Consultant

a. Rights & 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, 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 the services. Consultant shall be solely responsible for all matters relating to the payment of Consultant's 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.

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 warrants that Consultant and the Consultant's employees and subcontractor are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Consultant's performance of services. All services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Consultant will promptly advise the 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.

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 City to Consultant for services under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify City for any claims, costs, losses, fees, penalties, interest or damages suffered by 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 Consultant's 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 City

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 Attorney or the Chief Assistant City Attorneys.

6. Proprietary or Confidential Information of the City

Consultant understands and agrees that, in the performance of the services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Consultant agrees that all information disclosed by the City to Consultant shall remain 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 sub-consultants, in specifications, studies, reports, memoranda, computation documents prepared by Consultant or its sub-consultants in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, 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 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 audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

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, 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 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 Consultant from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal property records. 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. Consultant shall, upon expiration or termination of this Agreement, deliver to the City all of the said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

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

14. Insurance

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

15. Indemnification

- a) Notwithstanding any other provision of this Agreement, Consultant 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 Consultant's obligations, representations or warranties under this Agreement;
 - ii) Act or failure to act in the course of performance by Consultant under this Agreement;
 - iii) Negligent or willful acts or omissions in the course of performance of Consultant 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 Consultant;
 - v) Unauthorized use or disclosure by Consultant of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
 - vi) Claim of infringement of alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b) For purposes of the preceding Subsections (i) through (vi), the term Consultant includes Consultant, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c) City shall give Consultant prompt written notice of any such claim of loss or damage and shall cooperate with Consultant, 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 Consultant fails or refuses to defend City with legal counsel acceptable to City to engage its own legal counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due to 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.
- e) Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any such action or claim which potentially falls within the indemnification provision, which obligation shall arise at the same time thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Consultant'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 Consultant's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

- g) The indemnity set forth in this Section 15 shall not be limited to by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of 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 of money due or to become due from City shall be subject to deduction or offset by City from any monies due Consultant I 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. 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, Consultant 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 Consultant or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between Consultant or its subcontractor and claimant, in which case Consultant or its subcontractor may withhold the disputed amount but shall not pay the undisputed amount.

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

Consultant 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. Consultant and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Consultant 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 Consultant is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following a receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by Consultant 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 Consultant 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 Consultant 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.

Consultant and subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this City of Oakland Agreement.

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

18. Termination on Notice

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

19. 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 City or its designees or agents, and no other public official of City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement or in its proceeds during his/her tenure or for one year thereafter.
- iii. 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. Counsel 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 Consultant's 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 "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 in the previous year. 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 sub agreements for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing here is intended to, nor waives, any applicable federal, state or local conflict of interest law or regulation.

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal and state law, 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 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.

20. 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 subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscriminatory policy shall include, but not be limited to employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- b. Consultant and Consultant's subcontractors 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 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 American 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 of 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.

21. Local, Small Business Enterprise Program (LSBE)

- a. Requirement – There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Consultant shall comply with the twenty percent local business participation requirement at a rate of ten percent (10%) local and ten percent (10%) small local business participation. The requirement may be satisfied by a certified prime Consultant and/or subcontractor(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland to earn credit toward meeting the twenty percent requirement.
- b. Good Faith Effort-In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. Incentives – Upon satisfying the twenty percent requirement, a Consultant will earn two preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. Banking – The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City-funded project and will allow Counsel to accumulate credits for hiring certified local businesses and certified small local businesses on non-City funded projects within a year of the City-funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultant will have one year to apply credits. A certificate validating banked credits must be issued by the City before the submittal or bid date.
- e. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime Consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE subcontractor and submitted to the City Administrator's Department of Contracting and Purchasing along with a copy of the final progress payment application.
- f. Joint Venture and Mentor Protégé Agreements. If a prime Consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. To earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Department of Contracting and Purchasing prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. Consultant shall submit information concerning the ownership and workforce composition of Consultant 's firm as well as its subcontractors and suppliers, by completing Schedule D

Ownership, Ethnicity and Gender Questionnaire and Schedule E Project Consultant Team attached and incorporated herein and made part of this Agreement.

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

22. Living Wage Requirements

If the amount of this Agreement is equal to or greater than \$25,000 annually, then 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 contractors (Consultant) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Schedule N and made part of this Agreement and, unless exemptions apply or a waiver is granted, 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 **\$12.93** with health benefits or **\$14.86** 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 – Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.93 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 at least ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. The ten uncompensated days off shall be made available, as

needed, for a personal or immediate family illness after employee has exhausted his or her accrued compensated days off for that year.

- d. Federal Earned Income Credit (EIC) – Consultant shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist with EIC. Websites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit: <http://www.cbpp.org/eic2008>.

23. Arizona Purchasing Boycott & Dispute Disclosure

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

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

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

24. Equal Benefits Ordinance

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

The following City contractors and Consultant 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 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**.

25. City of Oakland Campaign Contribution Limits

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

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

26. Nuclear Free Zone Disclosure

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

27. 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.

28. Religious Prohibition

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

29. 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.

30. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all-of-the project at any time. In such event, the City shall give thirty days (30) written notice of abandonment. In the event of abandonment before completion of the final drawings, if applicable, and cost estimates, 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 the said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty days (30) following submission of a final statement by Consultant.

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

31. Validity of Contracts

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

32. Governing Law

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

33. Notices

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

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

CONSULTANT CONTACT INFO

34. 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 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.

35. Modification

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

36. Severability/Partial Invalidity

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

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

37. Time of the Essence

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

38. 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 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, 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 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.

39. Approval

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

40. 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

Consultant,

Barbara J. Parker
City Attorney

CONSULTANT NAME

Signature

Signature

Date

Date

City of Oakland
Business Tax Certificate Number

END OF SAMPLE PROFESSIONAL SERVICES AGREEMENT

ATTACHMENT B - Stand-Alone Schedules Required with Proposal

SCHEDULE E (PROJECT CONSULTANT TEAM LISTING)

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023379.pdf> or request for a copy from Paula Peav at ppeav@oaklandnet.com or phone number 510-238-3190

AND

SCHEDULE O (CAMPAIGN CONTRIBUTION LIMITS)

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023287.pdf> or request for a copy from Paula Peav at ppeav@oaklandnet.com or phone number 510-238-3190



SCHEDULE O

CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an Original Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone _____-_____-_____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) Bid Proposal Qualification Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone _____-_____-_____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I/we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

_____/_____/_____
Signature Date

Print Name of Signer Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ____/____/____ By _____

Date Entered on Contractor Database: ____/____/____ By _____

Schedule Q

INSURANCE REQUIREMENTS

(Revised 07/08/15)

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 non-owned 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 \$1,000,000

each claim and \$1,000,000 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.

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.

ATTACHMENT C – SCHEDULES REQUIRED OF SELECTED CONTRACTOR

PLEASE READ CAREFULLY: It is the prospective primary proposer's/bidder's/grantee's responsibility to review all listed City Schedules, Ordinances and Resolutions.

If you have questions regarding any of the schedules, Ordinances or Resolutions, please contact the assigned Contract Compliance Officer listed on the Request for Proposals (RFP), Notice Inviting Bids (NIB), Request for Qualifications (RFQ) and Grant announcements.

By submitting a response to this RFP/Q, NIB, or Grant opportunities, to the City Of Oakland the prospective primary participant's authorized representative hereby certifies that your firm or not-for profit entity has reviewed all listed City Schedules, Ordinances and Resolutions and has responded appropriately.

Note: additional details are available on our website as follows:
<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.

1. Schedule B-2 - (Arizona Resolution) – Applies to all agreements and is part of the “Combined Contract Schedules”.

- i. This Agreement is subject to Resolution No. 82727 C.M.S. For full details of the Resolution please go to the City's website <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.
- ii. *Excerpt:* (Resolution #82727) RESOLVED: That unless and until Arizona rescinds SB 1070, the City of Oakland urges City departments to the extend where practicable, and in instances where there is no significant additional cost to the city or conflict with law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona.
- iii. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule B-2 form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)

2. Schedule C-1 - (Declaration of Compliance with the Americans with Disabilities Act) – Applies to all agreements and is part of the “Combined Contract Schedules”.

- i. This Agreement is subject to the Americans with Disabilities Act (ADA). It requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

- (1) You certify that you will comply with the Americans with Disabilities Act by:
 - (2) Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;
 - (3) Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;
 - (4) Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;
 - (5) Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;
 - (6) Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities;
 - (7) If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.
- ii. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule C-1 form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see *Combined Schedules*)

For Declaration of ADA compliance for facility and other special events agreements please reference C-2 on the above web site.

3. **Schedule D** – (Ownership, Ethnicity, and Gender Questionnaire) – **Applies to all agreements and is part of the "Combined Contract Schedules"**. *Please be advised that ethnicity and gender information will be used for reporting and tracking purposes ONLY.*

This agreement is subject to the reporting of Ownership, Ethnicity and Gender questionnaire form. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule D form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see *Combined Schedules*)

4. **Schedule E** – (Project Consultant or Grant Team). **Applies to Non-Construction agreements and is a**

“stand alone Schedule¹” and must be submitted with proposal.

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule E form, this form is required to be submitted with the proposal.
- ii. The form can also be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.
- iii. This form is use for establishing level of certified local Oakland for profit and not for profit participation and calculating compliance with council’s 50% local participation policy.
- iv. In response to this RFP/Q or grant opportunity, the prime shall be a qualified for profit or not-for profit entity.
- v. Sub-Consultants (if used) or sub-grantees must be listed to include: addresses, telephone numbers and areas of expertise/trace category of each. Briefly describe the project responsibility of each team member. Identify if contractors are certified MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE), Locally Produced Goods or Very Small Local Business Enterprise. Additionally, for LBEs/SLBEs, please submit a copy of current business license local business certificate and date established in Oakland.

5. Schedule E-2 (Oakland Workforce Verification Form) – Referenced in Attachment B. Applies to Non-Construction agreements and is a “stand alone Schedule”, and must be submitted with proposal if seeking extra preference points for an Oakland Workforce.

- i. All prime consultants, contractors, or grantees seeking *additional preference* points for employing an Oakland workforce must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after the proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/Q, NIB, and competitive grant opportunity.
- ii. The Schedule E-2 form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>

6. Schedule F – (Exit Report and Affidavit) – Applies to all agreements and is a “stand alone Schedule”.

¹ Stand Alone Schedule is not part of the “Combined Schedule”.

- i. This Agreement is subject to the Exit Reporting and Affidavit form. The Schedule F form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.
- ii. The Prime Contractor/Consultant/Grantee must complete this form as part of the close-out process. Each LBE/SLBE sub-contractor/sub-consultant and sub-grantee (including lower tier LBE/SLBE sub-contractors/sub-consultants, sub-grantees, suppliers and truckers). The Exit Report and Affidavit must be submitted to Contracts and Compliance with the final progress payment application. (Remember to please complete an L/SLBE Exit Report for each listed L/SLBE sub-contractor/sub-consultant or sub-grantee).

7. Schedule G – (Progress Payment Form) – Applies to all agreements and is a “stand alone Schedule”.

This Agreement is subject to the reporting of subcontractor progress payments on a monthly basis. The Schedule G form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.

8. Schedule K – (Pending Dispute Disclosure Policy) – Applies to all agreements and is part of the “Combined Contract Schedules”.

- i. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule K form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see *Combined Schedules*)
- ii. Policy – All entities are required to disclose pending disputes with the City of Oakland when they submit bids, proposals or applications for a City contract, contract amendments or transaction involving:
 - (1) 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.
 - (2) Disclosure is required at the time bids, proposals or applications are due for any of the above-described contracts or transactions when an entity is responding to a competitive solicitation and at the commencement of negotiations when bids, proposals or applications are solicited by or submitted to the City in a non-bid or otherwise non-competitive process.
 - (3) The disclosure requirement applies to pending disputes on other City and Agency 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.

- (4) 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 or Agency.
- (5) 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 proposal for a professional service contract or other 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.

9. Schedule M – (Independent Contractor Questionnaire, Part A). – Applies to all agreements and is part of the "Combined Contract Schedules".

Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule M form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

10. Schedule N - (LWO - Living Wage Ordinance) – Applies to Non-Construction agreements and is part of the "Combined Contract Schedules".

- i. This Agreement is subject to the Oakland Living Wage Ordinance. The full details of the Living Wage Ordinance can be found on the City's website (https://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.28LIWAOR.html#TOP).
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule N form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

11. Schedule N-1 - (EBO - Equal Benefits Ordinance) – Applies to Non-Construction agreements over \$25,000 and is part of the "Combined Contract Schedules".

- i. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The full details of the Equal Benefits Ordinance can be found on the City website at http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEOR.html#TOP.
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule N-1 form and submit to the City. The form can be found on our website at

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

12. Schedule O – (City of Oakland Campaign Contribution Limits Form) - Applies to all agreements and is a “stand alone Schedule”, and must be submitted with proposal.

- i. 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**.
- ii. The form is also available on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>

13. Schedule P – (Nuclear Free Zone Disclosure) - Applies to all agreements and is part of the “Combined Contract Schedules”.

- i. This agreement is subject to the Ordinance 11478 C.M.S. titled “An Ordinance Declaring the City of Oakland a Nuclear Free Zone and Regulating Nuclear Weapons Work and City Contracts with and Investment in Nuclear Weapons Makers”. The full details of the Ordinance 111478 C.M.S. can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule P form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

14. Schedule Q - (Insurance Requirements) - Applies to all agreements and is a “stand alone Schedule”, and evidence of insurance must be provided.

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule Q Insurance Requirements. Unless a written waiver is obtained from the City’s Risk Manager, Contractors must provide the insurance as found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> Schedule Q.
- ii. A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be provided in accordance with the requirements specified.

- iii. When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.
- iv. When providing the insurance, the “Certificate Holder” should be listed as: City of Oakland, Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

15. Schedule R – (Subcontractor, Supplier, Trucking Listing) – applies to Construction agreements only and is a “stand alone Schedule”.

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule R form. The form can also be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.
- ii. For establishing level of certified local Oakland for profit and not for profit participation and calculating compliance with council’s 50% local participation policy.
- iii. In response to this Notice Inviting Bids (NIB) opportunity, the prime shall be a qualified for profit or not-for profit entity.
- iv. The contractor herewith must list all subcontractors and suppliers with values in excess of one-half of 1 percent of the prime contractor’s total bid or ten thousand dollars (\$10,000) whichever is greater regardless of tier and all trucking and dollar amount regardless of tier to be used on the project. The contractor agrees that no changes will be made in this list without the approval of the City of Oakland. Provide the address, type of work, dollar amount and check all boxes that apply. Bidders that do not list all subcontractors and suppliers with values greater than one half of one percent and all truckers regardless of tier and dollar amount shall be deemed non-responsive.
- v. Identify if contractors are certified MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE), Locally Produced Goods or Very Small Local Business Enterprise.

16. Schedule V – (Affidavit of Non-Disciplinary or Investigatory Action) - Applies to all agreements is part of the “Combined Contract Schedules”.

This Agreement is subject to the Schedule V - Affidavit of Non-Disciplinary or Investigatory Action. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

PLEASE NOTE: *By submitting an RFP/Q, NIB or Grants to the City Of Oakland the prospective primary participant’s authorized representative hereby obligates the proposer(s) to the stated conditions referenced in this document.*