



OAKLAND POLICE COMMISSION SPECIAL MEETING AGENDA

January 9, 2020

5:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Vice Chair Ginale Harris

II. Roll Call and Determination of Quorum

Vice Chair Ginale Harris

Excused Absence: Regina Jackson

III. Public Comment on Closed Session Items

THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION IN CITY HALL BUILDING BRIDGES ROOM, 3RD FLOOR AND WILL REPORT ON ANY FINAL DECISIONS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.

IV. Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE - Gov't Code § 54957(b)

V. Determinations of Closed Session

- a. The Commission will report on any actions taken during Closed Session, as required by law.
- b. Public Comment

VI. Welcome, Purpose, and Open Forum (2 minutes per speaker)

Vice Chair Ginale Harris will welcome and call public speakers. The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's (OPD) policies, practices, and customs to meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

VII. Vote to Approve Release of RFP for Closed Captioning Services

The Commission will review a draft RFP for closed captioning services and vote to finalize and issue the RFP. ***This is a new item.*** ([Attachment 7](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

VIII. OPD Update on Oakland Black Officers Association (OBOA) Internal Affairs (IA) Investigation

OPD will provide an update on the status of the IA investigation into the claims of the OBOA. ***This is a new item.***

- a. Discussion
- b. Public Comment
- c. Action, if any

IX. Vote to Approve Release of RFP for An Investigator for the OBOA Case

The Commission will review a draft RFP for investigation services regarding the OBOA allegations and vote to finalize and issue the RFP. ***This is a new item.*** ([Attachment 9](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

X. Use of Force Working Group

The Use of Force Working Group will present its revised draft report and a draft of the Oakland Police Department Use of Force Policy, Department General Order (DGO) K-03. The Commission will vote to approve the report and the revised DGO. ***This is item is continued from 12.12.19.*** ([Attachment 10](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

XI. Presentation by National Institute for Criminal Justice Reform (NICJR) of Proposed Pilot Juvenile Diversion Program

David Muhammad of NICJR will deliver a presentation on the Neighborhood Opportunity and Accountability Board (NOAB) which will be a community based, restorative, youth diversion initiative in Oakland. ***This is a new item.*** ([Attachment 11](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

XII. Edits to Resolution 19-01

On October 24, 2019 the Commission approved Resolution 19-01 to engage the services of Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147, for an amount not-to-exceed \$49,999, with all work to be conducted by licensed investigators. Knox & Ross Law Group has requested edits to the resolution. The Commission will review the suggested edits and may vote to approve the inclusion of those edits in an amended resolution. ***This item was discussed on 10.24.19.*** ([Attachment 12](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

XIII. Meeting Minutes Approval

The Commission will vote to approve minutes from July 25, August 22, and September 12, 2019. ***This is a recurring item.*** ([Attachment 13](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

XIV. **Committee/Liaison/Other Commissioner Reports**

This time is set aside to allow Commissioners to present a brief report on their own activities, including service on committees or as liaisons to other public bodies. No action may be taken as a result of a report under this section other than to place a matter for consideration at a future meeting. ***This is a recurring item.***

- a. Discussion
- b. Public Comment
- c. Action, if any

XV. **Agenda Setting and Prioritization of Upcoming Agenda Items**

The Commission will engage in a working session to discuss and determine agenda items for the upcoming Commission meeting and to agree on a list of agenda items to be discussed on future agendas. ***This is a recurring item.*** ([Attachment 15](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

XVI. **Adjournment**



This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin, or Spanish interpreter, please e-mail jrus@oaklandca.gov or call 510-238-3325 or 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín, o de lenguaje de señas (ASL) por favor envíe un correo electrónico a jrus@oaklandca.gov o llame al 510-238-3325 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 jrus@oaklandca.gov 或致電 510-238-3325 或 711。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

Because some persons are sensitive to certain chemicals, persons attending this meeting are requested to refrain from wearing scented products.



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Multi-Year Contract to Provide Real-Time Closed-Captioning Services for Meetings of the Oakland Police Commission
Date:	December 27, 2019
Prepared by:	Juanito Rus, CPRA Policy Analyst
Approved by:	John Alden, CPRA Executive Director

Action Requested:

The Community Police Review Agency (CPRA) requests that the Oakland Police Commission direct the CPRA Executive Director to conduct a competitive solicitation process for proposals for a three (3) year contract with the option of two (2) one-year extensions to provide real-time closed captioning services for regularly scheduled Commission meetings in City Hall for a total amount not to exceed \$50,000.

Background:

In the Fall of 2019, a member of the public reached out to the Oakland Police Commission to request real-time closed captioning at Commission meetings as a reasonable accommodation for the hearing impaired. Upon consultation with various City departments, the staff of the Community Police Review Agency (CPRA) determined that real-time captioning is a service that is provided for meetings of the Oakland City Council (Council) and Council Standing Committees, but that those services are not typically provided to other public meetings of City Boards and Commissions. The City, through its public access television network KTOP, has a multi-year contract with an outside vendor to provide Council real-time captioning services. However, the contract through which those services are provided is specific to meetings of the Council and Council committees, and therefore cannot be extended to meetings of the Oakland Police Commission. The City has a second multi-year contract for real-time captioning services through the ADA Services Division, however that contract too is limited in the number of hours which could be provided for Commission meetings, and is therefore not an adequate long-term solution to the public request for ongoing accommodations for the hearing impaired at those meetings.

Because neither of the existing City of Oakland contracts for real-time closed captioning services can be made to adequately address the long-term request for reasonable accommodation of the hearing impaired at meetings of the Oakland Police Commission,

CPRA staff, in consultation with the Commission Chair, determined that the most effective resolution of this request would require the Commission to enter into its own separate multi-year contract with an outside vendor to provide real-time captioning services specifically for regular Commission meetings. This contract will be paid out of the Commission's contract contingencies account at an hourly rate determined through the RFP process for a total amount not to exceed \$50,000 over the life of the contract. The RFP is to specify a contract term of three (3) years with the possibility of two (2) one-year extensions based on the continuing availability of funding under the \$50,000 cap and the performance of the selected service provider.

Contract Authority

On July 16, 2019, The Oakland City Council approved Ordinance No. 13547 C.M.S., granting the Police Commission certain authority to approve contracts on their own behalf. On September 12, 2019, the Oakland Police Commission received contracts training related to that authority. The first step of the contracting process for contracts of \$50,000 or more outlined in that training specifies that:

"[The Oakland] Police Commission, by majority vote:

- Identifies need for contract services;
- Articulates draft scope of work, including deliverables and timeline (if possible);
- Articulates desired qualifications, experience for contractor (if possible);
- Identifies budget for contract services; and
- Directs CPRA Executive Director to conduct competitive solicitation process for proposals based on the above information."

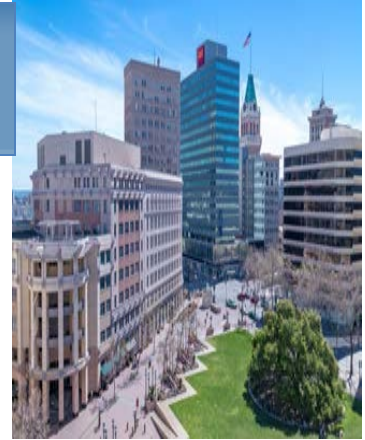
This item therefore serves to initiate the contracting process and to "direct the CPRA Executive Director to conduct the competitive solicitation process for proposals" for the contract described in this Agenda Report.

Attachment (7a):

DRAFT RFP for Police Commission Meeting Closed Captioning Services - 2020



City of
OAKLAND California



CITY OF OAKLAND POLICE COMMISSION

REQUEST FOR PROPOSALS
(RFP)
For

Police Commission Meeting Closed Captioning Services – 2020

- ✓ **Due Date:** Date
- ✓ **Voluntary Pre-Proposal Meeting:** Date
- ✓ **Meeting location.**
 - Advise the Project Manager via email by **date** if a call-in to the voluntary pre-bid meeting is needed.

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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: <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> or at 250 Frank H. Ogawa Plaza Suite 3341, Oakland, CA Contracts and Compliance Division. Also, request a copy by email from isupplier@oaklandca.gov

REQUEST FOR PROPOSAL (RFP) – (Title)

I. INTRODUCTION

This Request for Proposal (RFP) is being issued by the City of Oakland Police commission

Pre-proposal Meeting Date and Time (Voluntary or Mandatory): **date** at **time**

Deadline for Questions: **deadline** by email to the Project Manager, jrus@oaklandca.gov

Proposal Submittal Deadline Date and Time: **date and time**

Deliver To: Office of the City Administrator, Contracts and Compliance Division,
250 Frank Ogawa Plaza 3rd Floor, Suite 3341, Oakland, Ca 94612
Phone: (510) 238-3190

Proposals Must Be Received and Time Stamped by Contracts and Compliance Staff No Later Than - 2:00 P.M. Proposals not received at the above location by the Proposal Submittal Deadline are late and will be returned to proposers unopened.

The Contractor shall be required to comply with all applicable City programs and policies outlined in Attachment C. Details are presented in the project documents and will be discussed at the pre-proposal meeting. Discussions will include, but may not be limited to: ♦ Equal Benefits for Registered Domestic Partners ♦ Campaign Contribution ♦ Post-project Contractor Evaluation ♦ Prompt Payment ♦ Arizona Boycott ♦ 50% L/SLBE ♦ Dispute Disclosure ♦ Living Wage ♦ Minimum Wage ♦ Professional Services Local Hire ♦ and Border Wall Prohibition

Contractors who wish to participate in the RFP/RFQ process are required to register in iSupplier to receive addenda, updates, announcements and notifications of contracting opportunities. We recommend updating your firm's primary email address regularly and periodically confirming that the "Products and Services" section fully represents the scope of products and services provided. If you have any questions, please email isupplier@oaklandca.gov.

For further information and detailed iSupplier registration instructions, please visit the following link <https://www.oaklandca.gov/services/register-with-isupplier>

Free copies of the RFP/RFQ documents and Addenda are available in iSupplier. Hard copies will NOT be available for purchase from the City. Please consult the City website for the Plan Holder list.

1. iSupplier Registration/Login:
<https://www.oaklandca.gov/services/register-with-isupplier> New registrants can email isupplier@oaklandca.gov for registration instructions. Allow 3 working days for approval to access bid documents through iSupplier

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iSupplier Plan Holders List:

<https://www.oaklandca.gov/services/active-closed-opportunities>

Contact Information: The following City staffs are available to answer questions regarding this RFP.

1. Project Manager: Juanito Rus at jrus@oaklandca.gov or (510) 238-3325
2. Contract Admin: Paula Peav at ppeav@oaklandca.gov or (510) 238-3190
3. Contract Compliance Officer: Sophany Hang or Vivian Inman at @oaklandca.gov or (510) 238-3723

(INSERT YOUR INTRODUCTION IF APPLICABLE)

II. SCOPE OF SERVICES

The scope of services desired by the City include stenography services for real-time closed captioning of all regularly scheduled meetings of the Oakland Police Commission, excluding closed session meetings. This project will provide real-time closed captioning to the following standing meetings of the Oakland Police Commission:

Day	Time	Meeting
2nd and 4th Thursdays	6:30 pm to 10:30 pm	Oakland Police Commission

The scheduled times of these meetings are subject to change and or cancellation and the actual meeting duration will vary for each meeting. In addition, other special meetings of the Oakland Police Commission may be scheduled at any time.

A. CLOSED CAPTIONING SYSTEM

The City of Oakland will provide all the necessary software and equipment required to provide real-time captioning. Bidders must be able to work with the equipment and software provided by the City of Oakland. The bidder will be solely responsible for any software compatibility costs and captioning equipment.

The following equipment are used for closed captioning within the Committee Hearing Rooms and Council Chamber.

Council Chamber:

Link Electronics PTC-892 Digital Analog Encoder with Link IPC-92 (for IP Captioning)

Hearing Room 1

Link Electronics PDR 885 VBI Caption Data Processor

Master Control

Link Electronics SCE-492 3G/HD/SD Closed Caption Encoder

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III. THE PROPOSAL**A. GENERAL INFORMATION**

1. The successful proposer selected for this service shall obtain or provide proof of having a current City of Oakland Business tax Certificate.
2. The City Council reserves the right to reject any and all bids.
3. Local and Small Local Business Enterprise Program (L/SLBE)
 - a) *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are taken into account in the calculation. The requirement may be satisfied by a certified prime consultant and/or subconsultant(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.
 - b) Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
 - c) Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
 - d) A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
 - e) In those instances where Very Small Local Business Enterprise

REQUEST FOR PROPOSAL (RFP) – (Title)

(VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.

- f) 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.**
- g) Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h) The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
- i) Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant 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.
- j) Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.

REQUEST FOR PROPOSAL (RFP) – (Title)

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

4. 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 (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:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$13.75 with health benefits or \$15.78 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, Contract shall pay adjusted wage rates.

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- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$2.03 per hour**. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. For more information, web sites include but are not limited to: (1) <https://www.irs.gov/> and <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit>
- e. 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.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the 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.

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h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to Contracts and Compliance.

5. Minimum Wage Ordinance

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

For further information, please go to the following website:

<https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

6. 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

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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_CH2.32EQ_BEOR.html#TOPTITLE

7. Prompt Payment 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 subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

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

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of

REQUEST FOR PROPOSAL (RFP) – (Title)

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 subcontractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor 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: <https://www.oaklandca.gov/resources/prompt-payment-forms> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

8. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's 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.
- b. 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.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the

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Americans with Disabilities Act, attached hereto and incorporated herein.

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

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minorities and women as well as other segments of Oakland’s business community.

9. 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.

10. Border Wall Ordinance

This contract is subject to the Border Wall Ordinance of Oakland Municipal Code (Ordinance 13459 C.M.S, passed November 28, 2017) and effective immediately upon adoption. The purpose of the ordinance is to mandate and direct the City Administrator- in instances where there is no significant additional cost, to be defined in regulations, or conflict with law- to refrain from entering into new or amended contracts to purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials or supplies to build the U.S.-Mexico border wall;

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

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

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11. Pending Dispute Disclosure Policy:

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City contract or transaction involving professional services. This includes contract amendments. Contractor 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.

12. 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.

13. 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.

14. Sample Professional Service Agreement

This Agreement is subject to the attached Sample Professional Service Agreement.

15. 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

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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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (Schedule Q). A copy of the requirements is 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.

16. City Contractor Performance Evaluation

At the end of the project, the Project Manager will evaluate the Contractor's Performance in accordance with the City Contractor Performance Evaluation program.

17. 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.

18. 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,

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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.

19. The following City staff are available to answer questions:

RFQ and Project related issues:

Project Manager: Juanito Rus, (510) 238-3325

Contract Analyst: Paula Peav, (510) 238-3190

Compliance Officer: Vivian Inman or Sophany Hang

20. All responses to the RFQ become the property of the City.
21. The RFQ does not commit the City to award a contract or to pay any cost incurred in the preparation of the proposal.
22. The City reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFQ process.
23. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFQ and/or RFQ process, to obtain further information from any and all Contractor teams and to waive any defects as to form or content of the RFQ or any responses by any contractor teams
24. The City 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.
25. Once a final award is made, all RFQ responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.

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26. 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 RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

B. SUBMITTAL REQUIREMENTS (TO BE UPDATED BY DEPARTMENT)

Submit six (6) copies of proposal. **The proposals are due at the Department of Contracts and Compliance, Office of the City Administrator, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612 time stamped by no later than 2:00 P.M. [Submittal Deadline]. Proposals not received at the above location by the Proposal Submittal Deadline are late and will be returned to proposers unopened.**

All proposals submitted via US Mail or common carrier must be delivered in a sealed package with the project name, submittal date, time and location of the proposals on the outside of the package or the documents.

C. REQUIRED PROPOSAL ELEMENTS AND FORMAT

1. Transmittal Letter

- a. For the transmittal letter, only. Addressed to Sabrina Landreth, City Administrator, Office of the City Administrator, City Hall, 1 Frank Ogawa Plaza, 3rd Floor, Oakland, California, 94612. (Please do not submit proposals to this address or forward proposals to this address.)
- b. Signed by an officer of the consultant. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.

2. Project Team

- a. In response to this RFP, the prime contractor shall be qualified consulting firm. For LBEs/SLBEs, submit a copy of current business license and date established in Oakland.

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- b. Sub-Consultants (if used): list addresses, telephone numbers and areas of expertise of each. Briefly describe the project responsibility of each team member. Identify which contractors are MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE). Additionally, for LBEs/SLBEs, submit a copy of current business license and date established in Oakland.

3. Project Personnel

- a. Prime(s): Provide a detailed resume of the proposed principal-in-charge, lead person and the project manager(s). The Project Manager(s) shall be a full-time employee of the prime(s). Clearly identify experience.
- b. Sub- Consultants: Provide a detailed resume of the proposed project manager, who shall be a full-time employee of each sub-contractor for this project. Clearly identify relevant experience. He/she shall be a professional currently licensed in the State of California.

4. Relevant Experience

- a. Describe experiences performing similar functions in three local government operations to include a brief description of recommendations and outcomes.
- b. If the team has worked together collaboratively, please include a description of this work.
- c. Describe experiences and ability to work effectively with City staff, community groups, and other stakeholders.

5. Project Approach and Organization

- a. Present your concept of the approach and organization required for this project. Indicate your understanding of the critical project elements.
- b. Describe how you intend to interface with City staff and the community.

6. References

- a. Prime Consultant(s): Three business related references, giving name, company, address, telephone number and business relationship.

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- b. Proposed Project Manager(s): Two business related references, giving name, company, address, telephone number and business relationship to project manager.

7. Billing Rates

- a. Provide a complete list of all staff hourly rates by category, i.e., Principal, Project Manager, Project Professional, Technician, Clerical, etc. Hourly rates shall be all-inclusive, i.e., base salary, fringe benefits, overhead, profit, etc.
- b. Shall be all-inclusive, i.e., base salary, fringe benefits, overhead, profit, etc.

8. Submittals are validated using the following RFQ Checklist.

- a Schedules (Required with submission)

1. **Schedule E - Project Consultant Team**
2. **Schedule O - Campaign Contribution Limits**
3. **Schedule W – Border Wall Prohibition**

9. Other schedules must be submitted prior to full contract execution and are available at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

10. Addenda - Proposal and Acknowledgment of all Addenda – if issued, please provide signed addenda and submit with proposal.

11. Proprietary Information: All responses to the RFQ become the property of the City. To withhold financial and proprietary information, please label each page as "confidential" or "proprietary".

12. Public Records Act or Sunshine Ordinance: Although a document may be labeled "confidential" or "proprietary", information is still subject to disclosure under the Public Records Act or Sunshine Ordinance, and is, at the City's discretion, based on the potential impact of the public's interests whether to disclose "confidential" or "proprietary" information.

D. REJECTION OF PROPOSAL ELEMENTS

The City reserves the right to reject any or all proposals, whether minimum qualifications are met, and to modify, postpone, or cancel this RFQ without liability, obligation, or commitment to any party, firm, or organization. The City reserves the right to request and obtain additional information from any candidate submitting a proposal. A proposal may be rejected for any of the following reasons:

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- Proposal received after designated time and date.
- Proposal not in compliance with the City of Oakland Local/Small Local Business Enterprise Program.
- Proposal not containing the required elements, exhibits, nor organized in the required format.
- Proposal considered not fully responsive to this RFQ.

E. EVALUATION OF PROPOSALS – SUBJECT TO CHANGE (TO BE UPDATED BY DEPARTMENT)

The following sample of criteria and the points for each criterion, for a total of 110 points, may be used in evaluating and rating the proposals:

- 1) Relevant Experience30 points
 - Past, recently completed, or on-going local government projects to substantiate experience.
 - Experience on at least three (3) projects providing services like those described in this RFQ.
 - Prior experience and ability to work with City staff, community groups, and other stakeholders.
- 2) Qualifications25 points
 - Professional background and qualifications of team members and firms comprising the team.
- 3) Organization20 points
 - Current workload, available staff and resources.
 - Capacity and flexibility to meet schedules, including any unexpected work.
 - Ability to perform on short notice and under time constraints.
 - Cost control procedures in design and construction.
 - Ability to perform numerous projects at the same time.
- 4) Approach20 points
 - Understanding of the nature and extent of the services required.
 - A specific outline of how the work will be performed.
 - Awareness of potential problems and providing possible solutions.
 - Special resources the team offers that are relevant to the successful completion of the project.
- 5) L/SLBE Certified Business Participation2-5 Points
- 6) Other Factors.....10 points

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- Presentation, completeness, clarity, organization, and responsiveness of proposal.

F. INTERVIEWS OF SHORT-LISTED FIRMS – SUBJECT TO CHANGE

Interviews of short-listed qualified candidates may be held if a selection is not made from the evaluation phase. **(Department to modify SHORT LIST PROCESS see example below)**

- 1) It is anticipated that approximately three teams will be invited to interview. The selected teams will be notified in writing, and will be required to submit a detailed work scope, work schedule, and labor distribution spreadsheet (estimated hours by task by staff) the day before the interview. It is presently anticipated that the interviews will be conducted within five (5) working days of notification.
- 2) The interviews will last approximately 60 minutes, with the time allocated equally between the team's presentation and a question-and-answer period. The teams should be prepared to discuss at the interview their specific experience providing services like those described in the RFP, project approach, estimated work effort, available resources, and other pertinent areas that would distinguish them. Interviews will be held at a City of Oakland office (exact location to be determined).
- 3) Overall Rating Criteria: The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the short-listed firms:
 - a) Presentation:.....40 points (Scoring criteria is like that of the proposal criteria.)
 - Relevant Experience
 - Qualifications.
 - Organization.
 - Approach.
 - Other Factors
 - b) Request for Proposal Submittal:.....25 points
 - Total points from the initial review of proposals will be allocated proportionally based on a maximum allowance of 20 points
 - c) Interview / Questions:.....35 points

Overall Rating Criteria: The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the short-listed firms The City anticipates the tentative schedule of events to be as follows:

Only those contractors meeting the relevant experience and submit the SOQ will be invited for interviews.

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- 4) The City anticipates the **tentative schedule** of events to be as follows:
- | | |
|---------------------------------------|-----------------------|
| ▪ Distribution of RFP/RFQ | Time, Month Day, Year |
| ▪ Pre-proposal Meeting | Time, Month Day, Year |
| ▪ Submission of RFP/RFQ | Time, Month Day, Year |
| ▪ Evaluation of Rankings | Month Day, Year |
| ▪ Notification of Interviews | Month Day, Year |
| ▪ Interviews | Month Day, Year |
| ▪ Contract Negotiations | Month Day, Year |
| ▪ Contract Documentation Distribution | Month Day, Year |
| ▪ Contract Award | Month Day, Year |

**G. CONTRACT NEGOTIATIONS AND AWARD- SUBJECT TO CHANGE
(TO BE UPDATED BY DEPARTMENT)**

1. 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.
2. The contract amount (including reimbursements) shall be a not to exceed amount, to be established based upon a mutually agreeable Scope of Services and fee schedule.
3. The City will withhold the final **10%** of contract amount pending successful completion of work.
4. Upon successful completion of the negotiations, the City Administrator will award the contract to the selected contractor.
5. A sample City standard professional services agreement is included in the RFQ 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.
6. Upon award the City will issue a Notice to proceed.
7. 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.

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END OF RFQ

DRAFT

ATTACHMENT A

SAMPLE ONLY
PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
Name of Contractor

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

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

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

2. Scope of Services

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

3. Time of Performance

Contractor’s services shall begin on Month, Date, Year and shall be completed Month, Date, Year.

4. Compensation and Method of Payment

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

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the

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contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

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

5. Independent Contractor

a. Rights and Responsibilities

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

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. The Contractor warrants that the Contractor, and the Contractor's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor can fulfill the requirements of this Agreement. Failure to perform all the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M, Independent Contractor Questionnaire**, attached hereto.

c. Payment of Income Taxes

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

d. Non-Exclusive Relationship

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

e. Tools, Materials and Equipment

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

f. Cooperation of the City

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

g. Extra Work

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

6. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

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7. Ownership of Results

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

8. Copyright

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

9. Audit

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

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

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

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or

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transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

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

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

13. Title of Property

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

Contractor shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the “Notice” section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

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

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City’s request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
 - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
 - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term “Contractor” includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

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- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 15 are intended to apply 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 by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.
16. Right to Offset Claims for Money
- All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor because of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.
17. Prompt Payment Ordinance
- This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor

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and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

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

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

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

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

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <https://www.oaklandca.gov/resources/prompt-payment-forms> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

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18. Arizona and Arizona-Based Businesses

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

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

19. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, 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.

20. Termination on Notice

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

21. Conflict of Interesta. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

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- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of

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that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

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

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

22. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color,

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

- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act**, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

- a. *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/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.
- b. Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
- c. Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
- d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.

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- f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts
 - g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
 - h. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F, Exit Report and Affidavit** for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
 - i. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant can develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. To earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
 - j. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D, Ownership, Ethnicity, and Gender Questionnaire**, and **Schedule E, Project Consultant Team**, attached and incorporated herein and made a part of this Agreement.
 - k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
 - l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE

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- utilization to ensure the absence of unlawful discrimination based on age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

24. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$13.75 with health benefits or \$15.78 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, contractor shall pay adjusted wage rate.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$2.03 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

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- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
 - e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
 - f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
 - g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
 - h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.

25. Minimum Wage Ordinance

Oakland employers are subject to Oakland's Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site.

The law requires paid sick leave for employees and payment of service charges collected for their services.

For further information, please go to the following website:
<https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

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26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

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

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

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

27. City of Oakland Campaign Contribution Limits

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

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

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28. Nuclear Free Zone Disclosure

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

29. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

30. Religious Prohibition

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

31. Business Tax Certificate

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

32. Abandonment of Project

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

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

33. Validity of Contracts

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This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

34. Governing Law

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

35. Notice

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

<u>(City of Oakland)</u>	<u>Name of Contractor</u>
Agency/Department	Address
Address	City State Zip
Oakland, CA	Attn: <u>Project Manager</u>
Attn: <u>Project Manager</u>	

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

36. Entire Agreement of the Parties

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

37. Modification

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

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38. Severability/Partial Invalidity

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

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

39. Time of the Essence

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

40. Commencement, Completion and Close out

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

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

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

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

41. Approval

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

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42. Inconsistency

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

**City of Oakland,
a municipal corporation**

Name of Contractor

(City Administrator’s Office) (Date)

(Signature) (Date)

(Agency Director’s Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Date of Expiration

(City Attorney’s Office Signature) (Date)

Resolution Number

Accounting Number

END OF PROFESSIONAL SERVICES CONTRACT SAMPLE

**ATTACHMENT B1
(Stand-Alone Schedules Required with Proposal)**

**SCHEDULE E
(PROJECT CONSULTANT TEAM LISTING)**

An interactive version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/OAK023379.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov 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 <https://www.oaklandca.gov/uploads/documents/OAK023287.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

AND

**SCHEDULE W
(BORDER WALL PROHIBITION FORM)**

An version of this form can be downloaded from Contracts and Compliance website <https://www.oaklandca.gov/uploads/documents/Schedule-W-Form-Border-Wall-Prohibition.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

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**SCHEDULE E
PROJECT CONSULTANT TEAM LISTING**

To be completed by prime consultants only.

Date _____



Note:
The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with the City of Oakland in order to receive Local/Small Local Business Enterprise credits.

Company Name: _____

Signed: _____

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.
Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.
* (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)
** (M = Male) (F = Female)

(Revised as of 6/06)

REQUEST FOR PROPOSAL (RFP) – (Title)



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 _____

REQUEST FOR PROPOSAL (RFP) – (Title)

SCHEDULE W
BORDER WALL PROHIBITION

(This form is to be completed by Contractors and their sub-contractors, and all Vendors seeking to do business with the City of Oakland)

I, _____, the undersigned, a
(Name)

_____ of _____
(Title) (Business Entity)

(hereinafter referred to as Business Entity am duly authorized to attest on behalf of the business Entity)

- I. Neither this Business Entity nor any of its subsidiaries, affiliates or agents are under contract with any branch of the federal government to plan, design, build, support, repair and/or maintain any part of the border wall nor do we anticipate entering or competing for such work for the duration of a contract or contracts with the City of Oakland.
- II. The appropriate individuals of authority are cognizant of their responsibility to notify the city contact person/Project Manager, invoice reviewer or the City Administrator’s Office of Contracts and Compliance if any of the identified above decide to compete, plan, design, build, support, repair and/or maintain any part of work or servicing the border wall.
- III. To maintain compliance, upon review and approval of invoices, the contractors/vendors hereby agree to submit attached to each invoice, a declaration on company stationery that the company remains in compliance with the Border Wall Prohibition and will not seek or secure a contract related to all aspects of the Border Wall
- IV. Upon close out or completion of deliverables and prior to issuance of final payment (while honoring the Prompt Payment Ordinance) I agree to submit a statement attached to the final invoice, under penalty of perjury, declaring full compliance with the Border Wall Prohibition. I understand that an invoice is not declared fully complete and accepted unless and until the declaration of compliance is accepted.
- V. I declare under penalty of perjury that the above will not, have not and do not plan to participate in the building, servicing, maintenance of the operations of the so called “Border Wall”.

I declare that I understand Ordinance #13459 C.MS. Based on my understanding the above is true and correct to the best of my knowledge.

I declare that I understand Ordinance #13459 C.MS. Based on my understanding all or a portion of the above is not true and correct to the best of my knowledge.

(Printed Name and Signature of Business Owner)

(Date)

(Name of Business Entity)

(Street Address City, State and Zip Code)

(Name of Parent Company)

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**ATTACHMENT B2
(Stand-Alone Schedules Required Prior to Contract Award)**

**SCHEDULE E-2
(OAKLAND WORKFORCE VERIFICATION)**

An interactive version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/oak043692.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

AND

**SCHEDULE Q
(INSURANCE REQUIREMENTS)**

An interactive version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/OAK023255.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

REQUEST FOR PROPOSAL (RFP) – (Title)



Oakland Workforce Verification

Schedule E-2

Date Submitted: _____ Consultant/Service Provider: _____ Phone: _____

Address: _____ email: _____ # additional sheets attached: _____

PLEASE NOTE: All prime consultants seeking additional preference points for Oakland workforce must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/RFQ.

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

	EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
						1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE9
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

PLEASE NOTE BELOW:

- 1) A valid photo ID is required to prove Oakland residency. If the employee does not have a valid photo ID, the employer must submit at least two (2) other acceptable forms of ID/Other acceptable proofs of residency. Valid photo IDs include: a) U.S. Passport, b) Employment Authorization Document, c) State Driver's license or ID Card, d) School ID Card, and or e) U.S. Military Card.
- 2) Other Acceptable Proofs of Oakland Residency: Utility Bills, Bank Account Statements, Auto Registration, Mortgage Statements, Rental Agreements, and/or Verification of Public Assistance.
- 3) It is required that all firms submit their most recently filed DE6/9.

ADDITIONAL SHEET

Consultant/Service Provider _____ RFP/RFQ Title _____
 Additional Page # _____ of _____

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

	EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
						1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE6

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Schedule Q
INSURANCE REQUIREMENTS*(Revised 01/13/17)*a. General Liability, Automobile, Workers' Compensation and Professional Liability

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

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

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

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and 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

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less than \$2,000,000 each claim and \$2,000,000 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.

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.

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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

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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.

DRAFT

ATTACHMENT C: City Schedules and Policies

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:

<https://www.oaklandca.gov/documents/contracting-policies-and-legislation>

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 <https://www.oaklandca.gov/documents/contracting-policies-and-legislation>
- ii. *Excerpt:* (Resolution #82727) RESOLVED: That unless and until Arizona rescinds SB 1070, the City of Oakland urges City departments to the extent where practicable, and in instances where there is no significant additional cost to the city or conflict with law, to refrain from entering 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> *(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 its Contractors comply with their ADA obligations and verify such

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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 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and->

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

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- [schedules.](#)
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>
- 6. Schedule F – (Exit Report and Affidavit) – Applies to all agreements and is a “stand alone Schedule”.**
- i. This Agreement is subject to the Exit Reporting and Affidavit form. The Schedule F form can be found on our website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.
 - 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**

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Schedule”.

This Agreement is subject to the reporting of subcontractor progress payments monthly. The Schedule G form can be found on our website at

<https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.

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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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.

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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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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_CH2.28LIWAO_R.html#TOPTITLE).
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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#TOPTITLE.
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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**.

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- ii. The form is also available on our website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

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 <https://www.oaklandca.gov/documents/contracting-policies-and-legislation>
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> Schedule Q.
- ii. A copy of the requirements is 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.
- ii. For establishing level of certified local Oakland for profit and not for profit

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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 more than 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (see Combined Schedules)

17. Schedule W – (Border Wall Prohibition - **Applies to all agreements and is a “stand alone Schedule”, and must be submitted with proposal.**

This Agreement is subject to the Ordinance #13459 C.M.S. and its implementing regulations. The full details of the Border Wall Ordinance are located on the City website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-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.*



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Vote to Approve Release of RFP for An Investigator for the Oakland Black Police Officers Association Complaint
Date:	January 3, 2020
Prepared & Approved by:	John Alden, CPRA Executive Director

Action Requested:

The Community Police Review Agency (CPRA) requests that the Oakland Police Commission direct the CPRA Executive Director to conduct a competitive solicitation process for proposals from a professional workplace investigator to examine the allegations raised by the Oakland Black Officers Association (OBOA) in their open letter of March 15, 2019, specifically, whether the Oakland Police Department's promotional, disciplinary, hiring, or assignment practices have had a racially discriminatory effect or were motivated by racial bias. Furthermore, CPRA requests that the Commission provide direction as to scoping and other issues in the RFP.

Background:

On March 15, 2019, the OBOA publicly released an open letter that, in short, alleged that recent Oakland Police Department promotional, disciplinary, hiring, and assignment practices have had a racially discriminatory effect. That letter has been the subject of discussions at the Oakland Police Commission on multiple dates in 2019, culminating with the Commission directing CPRA to open an investigation into the matter. It has also been the subject of an investigative process within the Oakland Police Department.

The CPRA investigative model is designed to assess specific instances of police misconduct in the field involving members of the Oakland community, usually specific enforcement actions taken by police officers. CPRA has concluded that the personnel-related issues raised in the OBOA letter, particularly allegations of racial bias and/or discriminatory effect in promotions, hiring, and assignment practices, require specialized investigative and analytical skills different from those at CPRA. Moreover, the time required for such an investigation is beyond CPRA's current staffing.

Such an investigation would be better suited to an Inspector General, as such offices are typically staffed to examine trends and patterns in government systems, as opposed to the facts of specific one-time incidents. However, Oakland's independent Inspector General's office has not been staffed yet, and likely will not until 2021.

Recommendation:

For all these reasons, CPRA recommends hiring an outside workplace investigator. The scope and complexity of such an investigation would likely cause this investigation to cost more than \$50,000, triggering the need for a formal solicitation process, including a Request for Proposals (RFP). A draft RFP is attached for the Commission to consider.

CPRA would ask for the Commission's direction on the following issues raised by the RFP:

1. Setting the scope of the investigation;
2. Considering whether the subject matter of this investigation might be better addressed as a single investigation or staged into smaller pieces;
3. Considering the total cost of the investigation as against the budget of the Commission for contracting;
4. Criteria for selecting the best bidder.

CPRA would also be pleased to take whatever other direction the Commission wishes to provide on this issue.

Contract Authority

On July 16, 2019, The Oakland City Council approved Ordinance No. 13547 C.M.S., granting the Police Commission certain authority to approve contracts on their own behalf. On September 12, 2019, the Oakland Police Commission received contracts training related to that authority. The first step of the contracting process for contracts of \$50,000 or more outlined in that training specifies that:

“[The Oakland] Police Commission, by majority vote:

- Identifies need for contract services;
- Articulates draft scope of work, including deliverables and timeline (if possible);
- Articulates desired qualifications, experience for contractor (if possible);
- Identifies budget for contract services; and
- Directs CPRA Executive Director to conduct competitive solicitation process for proposals based on the above information.”

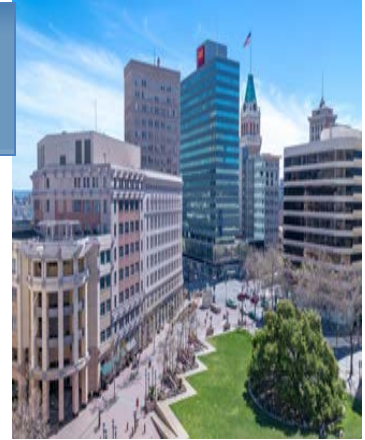
This item therefore serves to initiate the contracting process and to “direct the CPRA Executive Director to conduct the competitive solicitation process for proposals” for the contract described in this Agenda Report.

Attachment:

Draft RFP for Investigation of Promotional, Disciplinary, Hiring, and Assignment Practices at Oakland Police Department



City of
OAKLAND California



CITY OF OAKLAND POLICE COMMISSION

**REQUEST FOR PROPOSALS
(RFP)
For**

Investigation of Promotional, Disciplinary, Hiring, and Assignment Practices at Oakland Police Department

✓ **Due Date:** _____ – 2:00 p.m. (Pacific)

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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: <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> or at 250 Frank H. Ogawa Plaza Suite 3341, Oakland, CA Contracts and Compliance Division. Also, request a copy by email from isupplier@oaklandca.gov

REQUEST FOR PROPOSAL (RFP) – OFD Background Investigations 2019/20

I. INTRODUCTION

This Request for Proposal (RFP) is being issued by the City of Oakland, Police Commission.

Deadline for Questions: 2:00 PM, [date tbd] by email to the Project Manager, Juanito Rus, JRus@Oaklandca.gov.

Proposal Submittal Deadline Date and Time: [date tbd] at 2:00 PM

Deliver To: Office of the City Administrator, Contracts and Compliance Division,
250 Frank Ogawa Plaza 3rd Floor, Suite 3341, Oakland, Ca 94612
Phone: (510) 238-3190

Proposals Must Be Received and Time Stamped by Contracts and Compliance Staff No Later Than - 2:00 P.M. Proposals not received at the above location by the Proposal Submittal Deadline are late and will be returned to proposers unopened.

The Contractor shall be required to comply with all applicable City programs and policies outlined in Attachment C. Details are presented in the project documents and will be discussed at the pre-proposal meeting. Discussions will include, but may not be limited to: ♦ Equal Benefits for Registered Domestic Partners ♦ Campaign Contribution ♦ Post-project Contractor Evaluation ♦ Prompt Payment ♦ Arizona Boycott ♦ 50% L/SLBE ♦ Dispute Disclosure ♦ Living Wage ♦ Minimum Wage ♦ Professional Services Local Hire ♦ and Border Wall Prohibition

Contractors who wish to participate in the RFP/RFQ process are required to register in iSupplier to receive addenda, updates, announcements and notifications of contracting opportunities. We recommend updating your firm's primary email address regularly and periodically confirming that the "Products and Services" section fully represents the scope of products and services provided. If you have any questions, please email isupplier@oaklandca.gov.

For further information and detailed iSupplier registration instructions, please visit the following link <https://www.oaklandca.gov/services/register-with-isupplier>

Free copies of the RFP/RFQ documents and Addenda are available in iSupplier. Hard copies will NOT be available for purchase from the City. Please consult the City website for the Plan Holder list.

1. iSupplier Registration/Login:
<https://www.oaklandca.gov/services/register-with-isupplier> New registrants can email isupplier@oaklandca.gov for registration instructions. Allow 3 working days for approval to access bid documents through iSupplier
iSupplier Plan Holders List:

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<https://www.oaklandca.gov/services/active-closed-opportunities>

Contact Information: The following City staffs are available to answer questions regarding this RFP.

1. Project Manager: Juanito Rus, JRus@Oaklandca.gov, 510-238-3325.
2. Contract Compliance Officer: Vivian Inman, VInman@oaklandca.gov,

II. SCOPE OF SERVICES

The City of Oakland is one of the most diverse cities in the nation. The citizens of Oakland proudly represent various ethnic, cultural, socio-economic and religious backgrounds. The diversity the geographical layout and has multiple risk factors, including the threat of earthquakes, wildfires, water emergencies, high rise buildings, a sports complex, the Port of Oakland and the Oakland Airport. The proud men and women of the Oakland Police Commission are committed to the protection of life and property of the residents of Oakland.

The Oakland Police Commission will enter into a contract agreement with a professional workplace investigator to examine the allegations raised by the Oakland Black Officers Association (OBOA) in their open letter of March 15, 2019, specifically, whether the Oakland Police Department’s promotional, disciplinary, hiring, or assignment practices since January 1, 2017, have had a racially discriminatory effect or were motivated by racial bias.

The duration of the contract is currently estimated to be less than one (1) year.

The scope of work should include all aspects of conducting a comprehensive investigation of promotional, disciplinary, hiring, and assignment practices within the Oakland Police Department. The Contractor agrees to perform the services necessary for completion of this investigation, including, but not limited to, a written report and public presentation to the Police Commission at the conclusion of the investigation detailing whether an disparate impact or intentional discrimination was found, and what changes could be made to the promotional system to eliminate such impacts and/or discrimination, and to further advance the City of Oakland’s goal of achieving racial equity in all its operations, including promotional decisions within the Oakland Police Department.

III. THE PROPOSAL

A. GENERAL INFORMATION

1. The successful proposer selected for this service shall obtain or provide proof of having a current City of Oakland Business tax Certificate.
2. The City Council reserves the right to reject any and all bids.

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

- a) *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are 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.
- b) Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
- c) Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
- d) A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e) In those instances where Very Small Local Business Enterprise (VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.
- f) 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.**

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- g) Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h) The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
- i) Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant 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.
- j) Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.
- k) All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l) In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as

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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.

- m) In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.

4. 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 (contractors) of the City and employees of CFARs (Ord. 12050 § 1, 1998). Oakland employers are also subject to the City of Oakland Minimum Wage law (see Section 5, below), and must pay employees wages and provide benefits consistent with the Minimum Wage law or Oakland Living Wage Ordinance, whichever are greater.

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:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$13.75 with health benefits or \$15.78 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, Contract shall pay adjusted wage rates.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$2.03 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.

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- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. For more information, web sites include but are not limited to: (1) <https://www.irs.gov/> and <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit>
- e. 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.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the 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.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to Contracts and Compliance.

5. Minimum Wage Ordinance

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Oakland employers are subject to Oakland’s Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site. The law requires paid sick leave for employees and payment of service charges collected for their services. This contract is also subject to Oakland’s Living Wage Ordinance (see Section 4, above), and must pay employees wages and provide benefits consistent with the Living Wage Ordinance, whichever are greater.

For further information, please go to the following website:

<https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

6. 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

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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_CH2.32EQ_BEOR.html#TOPTITLE

7. Prompt Payment 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 subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

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

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury,

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that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the City, The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor 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: <https://www.oaklandca.gov/resources/prompt-payment-forms> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

8. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's 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.
- b. 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.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.

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

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9. 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.

10. Border Wall Ordinance

This contract is subject to the Border Wall Ordinance of Oakland Municipal Code (Ordinance 13459 C.M.S, passed November 28, 2017) and effective immediately upon adoption. The purpose of the ordinance is to mandate and direct the City Administrator- in instances where there is no significant additional cost, to be defined in regulations, or conflict with law- to refrain from entering into new or amended contracts to purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials or supplies to build the U.S.-Mexico border wall;

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

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

11. Pending Dispute Disclosure Policy:

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Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City contract or transaction involving professional services. This includes contract amendments. Contractor 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.

12. 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.

13. 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.

14. Sample Professional Service Agreement

This Agreement is subject to the attached Sample Professional Service Agreement.

15. 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

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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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (Schedule Q). A copy of the requirements is 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.

16. City Contractor Performance Evaluation

At the end of the project, the Project Manager will evaluate the Contractor’s Performance in accordance with the City Contractor Performance Evaluation program.

17. 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.

18. 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,

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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.

19. The following City staff are available to answer questions:

RFQ and Project related issues:
 Project Manager: Juanito Rus, 510-238-3325
 Contract Analyst: [tbd]
 Compliance Officer: [tbd]

20. All responses to the RFQ become the property of the City.
21. The RFQ does not commit the City to award a contract or to pay any cost incurred in the preparation of the proposal.
22. The City reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFQ process.
23. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFQ and/or RFQ process, to obtain further information from any and all Contractor teams and to waive any defects as to form or content of the RFQ or any responses by any contractor teams
24. The City 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.
25. All documents and information submitted to the City of Oakland in response to an RFP are public records pursuant to California Government Code, Sections 6254, et seq. and City of Oakland Sunshine Ordinance, Oakland Municipal Code Chapter 2.20. The City shall disclose such documents and information upon request by any member of the public, absent a mandatory duty to withhold or a discretionary exemption that the City may choose to exercise. The City shall not in any way be liable or

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responsible for any disclosures of documents or information made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.

26. 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 RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

B. SUBMITTAL REQUIREMENTS

Submit six (6) copies of proposal. **The proposals are due at the Department of Contracts and Compliance, Office of the City Administrator, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612 time stamped by no later than 2:00 P.M. [date tbd]. Proposals not received at the above location by the Proposal Submittal Deadline are late and will be returned to proposers unopened.**

All proposals submitted via US Mail or common carrier must be delivered in a sealed package with the project name, submittal date, time and location of the proposals on the outside of the package or the documents.

C. REQUIRED PROPOSAL ELEMENTS AND FORMAT

1. Transmittal Letter

- a. Signed by an officer of the consultant. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.

2. Project Team

- a. In response to this RFP, the prime contractor shall be qualified consulting firm. For LBEs/SLBEs, submit a copy of current business license and date established in Oakland.
- b. Sub-Consultants (if used): list addresses, telephone numbers and areas of expertise of each. Briefly describe the project responsibility of each team member. Identify which contractors

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are MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE). Additionally, for LBEs/SLBEs, submit a copy of current business license and date established in Oakland.

3. Project Personnel

- a. Prime(s): Provide a detailed resume of the proposed principal-in-charge, lead person and the project manager(s). The Project Manager(s) shall be a full-time employee of the prime(s). Clearly identify experience.
- b. Sub- Consultants: Provide a detailed resume of the proposed project manager, who shall be a full-time employee of each sub-contractor for this project. Clearly identify relevant experience. He/she shall be a professional currently licensed in the State of California.

4. Relevant Experience

- a. Describe experiences performing similar functions in three local government operations to include a brief description of recommendations and outcomes.
- b. If the team has worked together collaboratively, please include a description of this work.
- c. Describe experiences and ability to work effectively with City staff, community groups, and other stakeholders.

5. Project Approach and Organization

- a. Present your concept of the approach and organization required for this project. Indicate your understanding of the critical project elements.
- b. Describe how you intend to interface with City staff and the community.

6. References

- a. Prime Consultant(s): Three business related references, giving name, company, address, telephone number and business relationship.
- b. Proposed Project Manager(s): Two business related references, giving name, company, address, telephone number and business relationship to project manager.

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7. Billing Rates

- a. Provide a complete list of all staff hourly rates by category, i.e., Principal, Project Manager, Project Professional, Technician, Clerical, etc. Hourly rates shall be all-inclusive, i.e., base salary, fringe benefits, overhead, profit, etc.
- b. Shall be all-inclusive, i.e., base salary, fringe benefits, overhead, profit, etc.

8. Submittals are validated using the following RFQ Checklist.

a Schedules (Required with submission)

1. **Schedule E - Project Consultant Team**
2. **Schedule O - Campaign Contribution Limits**
3. **Schedule W – Border Wall Prohibition**

9. Other schedules must be submitted prior to full contract execution and are available at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

10. Addenda - Proposal and Acknowledgment of all Addenda – if issued, please provide signed addenda and submit with proposal.

11. Proprietary Information: All responses to the RFQ become the property of the City. To withhold financial and proprietary information, please label each page as "confidential" or "proprietary".

12. Public Records Act or Sunshine Ordinance: Although a document may be labeled "confidential" or "proprietary", information is still subject to disclosure under the Public Records Act or Sunshine Ordinance, and is, at the City's discretion, based on the potential impact of the public's interests whether to disclose "confidential" or "proprietary" information.

D. REJECTION OF PROPOSAL ELEMENTS

The City reserves the right to reject any or all proposals, whether minimum qualifications are met, and to modify, postpone, or cancel this RFQ without liability, obligation, or commitment to any party, firm, or organization. The City reserves the right to request and obtain additional information from any candidate submitting a proposal. A proposal may be rejected for any of the following reasons:

- Proposal received after designated time and date.

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- Proposal not in compliance with the City of Oakland Local/Small Local Business Enterprise Program.
- Proposal not containing the required elements, exhibits, nor organized in the required format.
- Proposal considered not fully responsive to this RFQ.

E. EVALUATION OF PROPOSALS – SUBJECT TO CHANGE (TO BE UPDATED BY COMMISSION/CPRA)

The following sample of criteria and the points for each criterion, for a total of 110 points, may be used in evaluating and rating the proposals:

- 1) Relevant Experience30 points
 - Past, recently completed, or on-going local government projects to substantiate experience.
 - Experience on at least three (3) projects providing services like those described in this RFQ.
 - Prior experience and ability to work with City staff, community groups, and other stakeholders.
- 2) Qualifications25 points
 - Professional background and qualifications of team members and firms comprising the team.
- 3) Organization20 points
 - Current workload, available staff and resources.
 - Capacity and flexibility to meet schedules, including any unexpected work.
 - Ability to perform on short notice and under time constraints.
 - Cost control procedures in design and construction.
 - Ability to perform numerous projects at the same time.
- 4) Approach20 points
 - Understanding of the nature and extent of the services required.
 - A specific outline of how the work will be performed.
 - Awareness of potential problems and providing possible solutions.
 - Special resources the team offers that are relevant to the successful completion of the project.
- 5) L/SLBE Certified Business Participation2-5 Points
- 6) Other Factors.....10 points
 - Presentation, completeness, clarity, organization, and responsiveness of proposal.

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F. INTERVIEWS OF SHORT-LISTED FIRMS – SUBJECT TO CHANGE BY COMMISSION/CPRA

Interviews of short-listed qualified candidates may be held if a selection is not made from the evaluation phase. **(Commission/CPRA to modify SHORT LIST PROCESS see example below)**

- 1) It is anticipated that approximately three teams will be invited to interview. The selected teams will be notified in writing, and will be required to submit a detailed work scope, work schedule, and labor distribution spreadsheet (estimated hours by task by staff) the day before the interview. It is presently anticipated that the interviews will be conducted within five (5) working days of notification.
- 2) The interviews will last approximately 60 minutes, with the time allocated equally between the team’s presentation and a question-and-answer period. The teams should be prepared to discuss at the interview their specific experience providing services like those described in the RFP, project approach, estimated work effort, available resources, and other pertinent areas that would distinguish them. Interviews will be held at a City of Oakland office (exact location to be determined).
- 3) Overall Rating Criteria: The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the short-listed firms:
 - a) Presentation:.....40 points (Scoring criteria is like that of the proposal criteria.)
 - Relevant Experience
 - Qualifications.
 - Organization.
 - Approach.
 - Other Factors
 - b) Request for Proposal Submittal:.....25 points
 - Total points from the initial review of proposals will be allocated proportionally based on a maximum allowance of 20 points
 - c) Interview / Questions:.....35 points

Overall Rating Criteria: The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the short-listed firms The City anticipates the tentative schedule of events to be as follows:

Only those contractors meeting the relevant experience and submit the SOQ will be invited for interviews.

- 4) The City anticipates the tentative schedule of events to be as follows:

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▪ Distribution of RFP/RFQ	Time, Month Day, Year
▪ Pre-proposal Meeting	Time, Month Day, Year
▪ Submission of RFP/RFQ	Time, Month Day, Year
▪ Evaluation of Rankings	Month Day, Year
▪ Notification of Interviews	Month Day, Year
▪ Interviews	Month Day, Year
▪ Contract Negotiations	Month Day, Year
▪ Contract Documentation Distribution	Month Day, Year
▪ Contract Award	Month Day, Year

**G. CONTRACT NEGOTIATIONS AND AWARD- SUBJECT TO CHANGE
(TO BE UPDATED BY COMMISSION / CPRA)**

1. 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.
2. The contract amount (including reimbursements) shall be a not to exceed amount, to be established based upon a mutually agreeable Scope of Services and fee schedule.
3. The City will withhold the final 10% of contract amount pending successful completion of work.
4. Upon successful completion of the negotiations, the City Administrator will award the contract to the selected contractor.
5. A sample City standard professional services agreement is included in the RFQ 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.
6. Upon award the City will issue a Notice to proceed.
7. 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.

END OF RFQ



ATTACHMENT A

SAMPLE ONLY
PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
Name of Contractor

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

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

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

2. Scope of Services

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

3. Time of Performance

Contractor’s services shall begin on Month, Date, Year and shall be completed Month, Date, Year.

4. Compensation and Method of Payment

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

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the

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contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

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

5. Independent Contractor

a. Rights and Responsibilities

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

b. Contractor's Qualifications

Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. The Contractor warrants that the Contractor, and the Contractor's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor can fulfill the requirements of this Agreement. Failure to perform all the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M, Independent Contractor Questionnaire**, attached hereto.

c. Payment of Income Taxes

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

d. Non-Exclusive Relationship

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

e. Tools, Materials and Equipment

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

f. Cooperation of the City

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

g. Extra Work

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

6. Proprietary or Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

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7. Ownership of Results

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

8. Copyright

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

9. Audit

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

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

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

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or

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transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

12. Publicity

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

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

13. Title of Property

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

Contractor shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the “Notice” section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

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

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City’s request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
 - (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
 - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
 - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term “Contractor” includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

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- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 15 are intended to apply 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 by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.
16. Right to Offset Claims for Money
- All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor because of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.
17. Prompt Payment Ordinance
- This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor

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and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

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

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

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

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

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <https://www.oaklandca.gov/resources/prompt-payment-forms> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandca.gov.

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18. Arizona and Arizona-Based Businesses

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

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

19. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, 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.

20. Termination on Notice

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

21. Conflict of Interesta. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

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- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of

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that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

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

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

22. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor’s subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor’s Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color,

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

- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act**, attached hereto and incorporated herein.
 - d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
23. Local and Small Local Business Enterprise Program (L/SLBE)
- a. *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/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.
 - b. Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
 - c. Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
 - d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
 - e. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.

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- f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts
- g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F, Exit Report and Affidavit** for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
- i. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant can develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. To earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- j. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D, Ownership, Ethnicity, and Gender Questionnaire**, and **Schedule E, Project Consultant Team**, attached and incorporated herein and made a part of this Agreement.
- k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE

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utilization to ensure the absence of unlawful discrimination based on age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.

24. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). **Oakland employers are also subject to the City of Oakland Minimum Wage law (see Section 25, below), and must pay employees wages and provide benefits consistent with the Minimum Wage law or Oakland Living Wage Ordinance, whichever are greater.** The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$13.75 with health benefits or \$15.78 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, contractor shall pay adjusted wage rate.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$2.03 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off

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shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.

25. Minimum Wage Ordinance

Oakland employers are subject to Oakland's Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site.

The law requires paid sick leave for employees and payment of service charges collected for their services.

This contract is also subject to Oakland's Living Wage Ordinance (see Section 24, above), and must pay employees wages and provide benefits consistent with the Living Wage Ordinance, whichever are greater.

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For further information, please go to the following website:
<https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

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

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

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

27. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign

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contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

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

28. Nuclear Free Zone Disclosure

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

29. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

30. Religious Prohibition

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

31. Business Tax Certificate

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

32. Abandonment of Project

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

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time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

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

33. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

34. Governing Law

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

35. Notice

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

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

Name of Contractor
Address
City State Zip
Attn: Project Manager

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

36. Entire Agreement of the Parties

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

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no other agreement, statement or promise not contained in this Agreement will be valid or binding.

37. Modification

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

38. Severability/Partial Invalidity

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

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

39. Time of the Essence

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

40. Commencement, Completion and Close out

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

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

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

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

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shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by Contractor.

41. Approval

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

42. Inconsistency

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

City of Oakland,
a municipal corporation

Name of Contractor

(City Administrator’s Office) (Date)

(Signature) (Date)

(Agency Director’s Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Date of Expiration

(City Attorney’s Office Signature) (Date)

Resolution Number

Accounting Number

END OF PROFESSIONAL SERVICES CONTRACT SAMPLE

ATTACHMENT B1
(Stand-Alone Schedules Required with Proposal)

**SCHEDULE E
(PROJECT CONSULTANT TEAM LISTING)**

An interactive version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/OAK023379.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

AND

**SCHEDULE O
(CAMPAIGN CONTRIBUTION LIMITS)**

An interactive version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/OAK023287.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

AND

**SCHEDULE W
(BORDER WALL PROHIBITION FORM)**

An version of this form can be downloaded from Contract s and Compliance website <https://www.oaklandca.gov/uploads/documents/Schedule-W-Form-Border-Wall-Prohibition.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

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**SCHEDULE E
PROJECT CONSULTANT TEAM LISTING**

To be completed by prime consultants only.

Date _____



Note:
The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with the City of Oakland in order to receive Local/Small Local Business Enterprise credits.

Company Name: _____

Signed: _____

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.

Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.

* (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)

** (M = Male) (F = Female)

(Revised as of 6/06)

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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 W

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BORDER WALL PROHIBITION

(This form is to be completed by Contractors and their sub-contractors, and all Vendors seeking to do business with the City of Oakland)

I, _____, the undersigned, a
(Name)

_____ of _____
(Title) (Business Entity)

(hereinafter referred to as Business Entity am duly authorized to attest on behalf of the business Entity)

- I. Neither this Business Entity nor any of its subsidiaries, affiliates or agents are under contract with any branch of the federal government to plan, design, build, support, repair and/or maintain any part of the border wall nor do we anticipate entering or competing for such work for the duration of a contract or contracts with the City of Oakland.
- II. The appropriate individuals of authority are cognizant of their responsibility to notify the city contact person/Project Manager, invoice reviewer or the City Administrator’s Office of Contracts and Compliance if any of the identified above decide to compete, plan, design, build, support, repair and/or maintain any part of work or servicing the border wall.
- III. To maintain compliance, upon review and approval of invoices, the contractors/vendors hereby agree to submit attached to each invoice, a declaration on company stationery that the company remains in compliance with the Border Wall Prohibition and will not seek or secure a contract related to all aspects of the Border Wall
- IV. Upon close out or completion of deliverables and prior to issuance of final payment (while honoring the Prompt Payment Ordinance) I agree to submit a statement attached to the final invoice, under penalty of perjury, declaring full compliance with the Border Wall Prohibition. I understand that an invoice is not declared fully complete and accepted unless and until the declaration of compliance is accepted.
- V. I declare under penalty of perjury that the above will not, have not and do not plan to participate in the building, servicing, maintenance of the operations of the so called “Border Wall”.

I declare that I understand Ordinance #13459 C.MS. Based on my understanding the above is true and correct to the best of my knowledge.

I declare that I understand Ordinance #13459 C.MS. Based on my understanding all or a portion of the above is not true and correct to the best of my knowledge.

(Printed Name and Signature of Business Owner) (Date)

(Name of Business Entity) (Street Address City, State and Zip Code)

(Name of Parent Company)

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**ATTACHMENT B2
(Stand-Alone Schedules Required Prior to Contract Award)**

**SCHEDULE E-2
(OAKLAND WORKFORCE
VERIFICATION)**

An interactive version of this form can be downloaded from Contracts and Compliance website <https://www.oaklandca.gov/uploads/documents/oak043692.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

AND

**SCHEDULE Q
(INSURANCE REQUIREMENTS)**

An interactive version of this form can be downloaded from Contracts and Compliance website <https://www.oaklandca.gov/uploads/documents/OAK023255.pdf> or request for a copy from Paula Peav at ppeav@oaklandca.gov or phone number 510-238-3190

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Oakland Workforce Verification

Schedule E-2

Date Submitted: _____ Consultant/Service Provider: _____ Phone: _____

Address: _____ email: _____ # additional sheets attached: _____

PLEASE NOTE: All prime consultants seeking additional preference points for Oakland workforce must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/RFQ.

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
					1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE9
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

PLEASE NOTE BELOW:

- 1) A valid photo ID is required to prove Oakland residency. If the employee does not have a valid photo ID, the employer must submit at least two (2) other acceptable forms of ID/Other acceptable proofs of residency. Valid photo IDs include: a) U.S. Passport, b) Employment Authorization Document, c) State Driver's license or ID Card, d) School ID Card, and or e) U.S. Military Card.
- 2) Other Acceptable Proofs of Oakland Residency: Utility Bills, Bank Account Statements, Auto Registration, Mortgage Statements, Rental Agreements, and/or Verification of Public Assistance.
- 3) It is required that all firms submit their most recently filed DE6/9.

ADDITIONAL SHEET

Consultant/Service Provider _____ RFP/RFQ Title _____
 Additional Page # _____ of _____

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
					1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE6

REQUEST FOR PROPOSAL (RFP) – OFD Background Investigations 2019/20

Schedule Q
INSURANCE REQUIREMENTS*(Revised 04/18/17)*a. General Liability, Automobile, Workers' Compensation and Professional Liability

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

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

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

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and 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 \$2,000,000 each claim and \$2,000,000 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.

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

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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: City Schedules and Policies

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:

<https://www.oaklandca.gov/documents/contracting-policies-and-legislation>

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 <https://www.oaklandca.gov/documents/contracting-policies-and-legislation>
- ii. *Excerpt:* (Resolution #82727) RESOLVED: That unless and until Arizona rescinds SB 1070, the City of Oakland urges City departments to the extent where practicable, and in instances where there is no significant additional cost to the city or conflict with law, to refrain from entering 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> *(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 its Contractors comply with their ADA obligations and verify such

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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 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

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

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schedules.

- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

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

- i. This Agreement is subject to the Exit Reporting and Affidavit form. The Schedule F form can be found on our website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.
- 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

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Schedule”.

This Agreement is subject to the reporting of subcontractor progress payments monthly. The Schedule G form can be found on our website at

<https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.

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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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.

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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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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_CH2.28LIWAO_R.html#TOPTITLE).
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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#TOPTITLE.
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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**.

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- ii. The form is also available on our website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

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 <https://www.oaklandca.gov/documents/contracting-policies-and-legislation>
- 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (*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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> Schedule Q.
- ii. A copy of the requirements is 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>.
- ii. For establishing level of certified local Oakland for profit and not for profit

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- 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 more than 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 <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules> (see Combined Schedules)

17. Schedule W – (Border Wall Prohibition - **Applies to all agreements and is a “stand alone Schedule”, and must be submitted with proposal.**

This Agreement is subject to the Ordinance #13459 C.M.S. and its implementing regulations. The full details of the Border Wall Ordinance are located on the City website at <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-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.*



DEPARTMENTAL
GENERAL
ORDER

Effective Date
1 Jan 20

K-3

Evaluation Coordinator:
Training Division

Index as:
Use of Force Policy

Evaluation Due Date:
2020, Dependent on Ad Hoc
Policy Working Group

USE OF FORCE

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DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

K-3

Effective Date:
1 Jan 20

SCOPE AND PURPOSE – REVISION 2

This revision modifies sections of the following General Order, K-03 *Use of Force*, to bring the Department’s use of force policy into compliance with Assembly Bill 392 (approved 19 Aug 19). Assembly Bill 392 modifies California Penal Code § 835a, which sets forth constraints on when California peace officers may use force.

The Department is making these changes to ensure that the use of force policy complies with the law. However, the Department also realizes that the authority to use force, conferred on peace officers by the law of the State of California, is a serious responsibility that must be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. As such, the Department, in concert with community, the Police Commission, and other civic partners, is in the process of completely re-writing the General Order to provide a comprehensive use of force policy which encapsulates the best practices surrounding use of force as well as de-escalation. The Department recognizes the urgency surrounding the need for a comprehensive new use of force policy, and is committed to diligently working towards that goal with an ad hoc use of force policy workgroup.

Revision Number	Revision Date	Reference Page Number(s)	Revision Number	Revision Date	Reference Page Number(s)
1	16 Oct 14	NEW	16		
2	1 Jan 20	1-4, 9	17		
3			18		
4			19		
5			20		
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8			23		
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10			25		
11			26		
12			27		
13			28		
14			29		
15			30		

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

K-3

Effective Date:
1 Jan 20



DEPARTMENTAL
GENERAL
ORDER

Effective Date
1 Jan 20

K-3

Evaluation Coordinator:
Training Division

Index as:

Evaluation Due Date:
2020, Dependent on Ad Hoc
Policy Working Group

Use of Force Policy

USE OF FORCE

The purpose of this order is to set forth Departmental policy and procedures for the use of force by members.

I. POLICY STATEMENT

- A. The Oakland Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force. It is the intent of the Department that members use deadly force only when necessary in defense of human life.
- B. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.
- C. This policy provides guidelines and procedures for using force in order to protect the safety of both themselves and the public in accomplishing the police mission.
- D. Members are allowed to **use a reasonable amount of less lethal force based on a totality of the circumstances¹. Members may use lethal force only when necessary to defend human life.² Members shall de-escalate whenever safe and feasible.** Members shall **intervene and prevent or stop** the use of unreasonable force by other members. Members shall use available resources and techniques other than force if reasonably safe and feasible to an objectively reasonable officer.
- E. Members are prohibited from the use of unreasonable force and using force for interrogation or punishment, **or from the unnecessary use of lethal force.**

¹ Reference Graham v. Connor, 490 U.S. 386 (1989).

² Reference Penal Code section 835a(a)(2), (c)(1).

- F. Although the use of force is primarily intended for sworn officers, various non-sworn employee job classifications include Departmental training in specific force options normally reserved for sworn officers. Employees are held to the same standard as members for the application of these authorized force options. All employees shall maintain their right to self-defense by any objectively reasonable means.
- G. A member or employee who uses force or directs a use of force shall be considered as “Involved Personnel.”
- H. Individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. In an attempt to mitigate these effects, members shall follow the policy and guidelines set forth in training and Departmental General Orders and Training Bulletins on interacting with individuals with disabilities, including:
- **DGO O-1, *Persons with Mental Illness***
 - **DGO O-1.1, *Crisis Intervention Program***
 - **Training Bulletin III-N, *Police Contact with Mentally Ill Persons***
 - **Training Bulletin VIII-F, *Police Response to Physically Handicapped***
- I. The decision by a member to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. The totality of the circumstances includes the conduct leading up to the use of force by both the subject and the member (e.g., compliance with policy and training in tactics and decisions leading up to the use of force).
- J. A member who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A member shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with section I, D and section IV, D to effect the arrest or prevent escape or to overcome resistance. For the purposes of this policy, “retreat” does not mean tactical repositioning or other de-escalation tactics.

II. FORCE CONSIDERATIONS

A. Reasonable **Nonlethal** Force

Reasonable force is that amount of force that is objectively reasonable to effect a lawful police purpose (i.e. effect an arrest, prevent escape, or overcome resistance) and protect the safety of members or others based upon the totality of the circumstances.

1. **Nonlethal** force must be analyzed under the Fourth Amendment's objective reasonableness test.³ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:
 - a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

2. Factors when determining if force is reasonable include, but are not limited to:
 - a. Physical differences (e.g., age, size, relative strength, skill level, injuries, exhaustion, number of members/employees verses subjects);
 - b. Influence of drugs or alcohol on the subject;
 - c. Proximity of weapons to the subject;
 - d. The conduct of the member and the subject leading up to the use of force (e.g. compliance with policy and training in tactics and decisions leading up to the use of force);
 - e. Training and experience level of the member or employee; and
 - f. Other exigent circumstances.

B. Immediate Threat

³ Graham v. Connor, 490 U.S. 386 (1989).

An Immediate Threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat of death or serious bodily injury if not apprehended without delay. A person is an immediate threat if the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat is not merely a fear of future harm; instead, an immediate threat is one that, from appearances, must be instantly confronted and addressed.

1. Intent: The subject's apparent desire, which can be indicated by words, body language or actions.
2. Means: The instrument, mechanical or physical, that may be used to cause injury.
3. Opportunity: The time and/or place which allows the subject to use the means to cause injury.
4. Ability: The subject has the capability to carry out the action or threat.

C. Use of Force

Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain, or overcome the resistance of an individual.

D. Less-Lethal Force

Any use of force, other than lethal force, which by design and application is less likely to cause serious bodily injury or death. However, the possibility of an unintended lethal outcome, although very rare, exists.

Less-Lethal Force options include, but are not limited to; those specified in Part III, FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS.

E. Lethal Force

Lethal force is any force that creates a substantial risk of causing death or serious bodily injury.

A member may use lethal force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

- (1) To defend against an immediate threat of death or serious bodily injury to the officer or to another person.

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() To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

To apprehend or arrest a person when the following three conditions are met:

- a. The member has reasonable cause to believe that the person is involved in the commission of a violent felony that includes the use or threatened use of deadly force; and
- b. The member has reasonable cause to believe that the person poses an immediate threat of death or serious bodily injury to the member or a third person if not immediately apprehended; and
- c. Other reasonably known and available means of apprehending the person have failed, are inadequate or are immediately unavailable.

In cases described in section II.E.2, where feasible, the member shall, prior to the discharge of the firearm, make reasonable efforts to identify themselves as a peace officer and warn the subject that deadly force may be used, unless the member has objectively reasonable grounds to believe the person is aware of those facts.
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Members are prohibited from discharging firearms, or using any lethal force, against persons who pose a threat solely to themselves if an objectively reasonable officer would believe the person does not pose an immediate threat of death or serious bodily injury to the member or to another person.

Lethal Force includes, but is not limited to:

1. Discharge of a firearm with lethal ammunition;
 - a. Lethal ammunition is ammunition that, by design and application, is intended to cause serious bodily injury or death.
2. Carotid restraint;
3. Intentional impact weapon strike to the head; and

4. Intentional use of a vehicle, at any vehicle speed, to strike a suspect.

F. Serious Bodily Injury

A serious impairment of physical condition, including but not limited to:

1. Loss of consciousness;
2. Concussion;
3. Bone fracture;
4. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ;
5. Wound requiring extensive suturing; and
6. Serious disfigurement

III. FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS

A. Verbal Persuasion

Verbal commands are the minimum means of halting an offense, gaining compliance or overcoming resistance. A member, announcing his or her identity as a peace officer, presence and intentions, may result in the peaceful resolution of the situation. Verbal commands shall be courteous and clearly relay the police objective.

To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force. Members shall consider the possibility of any language barriers, noise, other distractions, or disabilities which may impair or frustrate the member's effort to courteously and clearly communicate with the person.

B. Use of Physical Force or Defensive Tactics and Techniques

At times it may be necessary for a member to use force or defensive tactics and techniques to accomplish the police objective, such as taking a subject into custody, preventing the commission of a crime or in response to a suspect's resistance.

The defensive tactics and techniques that may be used include, but are not limited to: hand/palm/elbow strikes, kicks, take-downs, leg sweeps, arm-bar takedown

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and control holds, such as escort (elbow), bent wrist, twist lock and arm-bar hammerlock.

Absent exigent circumstances, all defensive, arrest and control techniques shall be compliant with Oakland Police Department policy and training. Refer to TB III-I.1, WEAPONLESS DEFENSE.

C. Use of Patrol Canines

The use of Police Canines is considered an intermediate force level that may inflict serious injury.

1. The primary purpose of Patrol Canine deployments is to search for, locate and assist in the apprehension of criminal suspects.
2. Canine handlers may deploy their canines to search for or bite a suspected criminal suspect.
3. Additional restrictions and reporting requirements apply to the use of Patrol Canines, as specified in DGO K-9, DEPARTMENT CANINE PROGRAM and DGO K-4, REPORTING AND INVESTIGATING THE USE OF FORCE.
4. An Unintentional Bite is not a use of force however has special reporting requirement. Refer to DGO K-9 for the definition of and reporting requirement for an Unintentional Bite.

D. Batons and Impact Weapons (other than intentional strikes to the head)

The use of an impact weapon is an intermediate use of force.⁴ The following are considered impact weapons:

1. Long baton;
2. Short baton;
3. Crowd control baton;
4. Asp®;
5. Specialty impact munitions (12-gauge Drag Stabilized Flexible Baton munitions, 37/40mm foam munitions, hand deployed SIM); and
6. Any other object used as an impact weapon other than vehicle.

⁴ Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

The use of an impromptu impact weapon or any weapon of necessity is justified when reasonable alternatives have been exhausted, are unavailable or are impractical.

Absent exigent circumstances, members shall only utilize Oakland Police Department authorized impact weapons and munitions. Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.2, HAND-HELD IMPACT WEAPONS and TB III-H, SPECIALTY IMPACT WEAPONS

E. Electronic Control Weapon (ECW)

The ECW is an intermediate use of force.⁵ ECW's provide a force option that may be used to control dangerous and violent subjects. The goal of every ECW deployment is a safe restraint of the subject using the minimum amount of electrical stimulation that is reasonable to obtain control. When used properly, members can stay beyond the reach and immediate striking distance of a subject who may attack them, thereby reducing the risk of injury to the member and the subject.

Using the ECW may greatly reduce the need for other types of physical force by members, which could otherwise result in serious injuries or death to the member and/or offender. Absent exigent circumstances, members shall only utilize Oakland Police Department authorized ECW's. Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.1, USE OF AN ELECTRONIC CONTROL WEAPON.

F. Chemical Agents and Oleoresin Capsicum (OC)

The use of OC and Chemical Agents are an intermediate use of force.⁶ Refer to TB V-F.2, CHEMICAL AGENTS and DGO C-8, OLEORESIN CAPSICUM

IV. USE OF FIREARMS AND OTHER LETHAL FORCE

A. Drawing, Exhibiting and Pointing Firearms

1. The intentional pointing of a firearm at another person is a use of force.⁷

⁵ Bryan v. MacPherson, 630 F. 3d 805 (9th Cir. 2010)

⁶ Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

⁷ Robinson v. Solano County, 278 F. 3d 1007 (9th Cir. 2002)

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2. The drawing, exhibiting and intentionally pointing of a firearm at another person is threatening and intimidating and when unwarranted may cast a negative impression on members. A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others.
3. The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

B. Firearms Discharge

The act of discharging a firearm loaded with lethal ammunition. Firearm discharges are classified as follows:

1. Lethal – An intentional firearm discharge at a person, regardless of injury.
2. Discharge at an Animal – A firearm discharge for the purpose of dispatching an injured or vicious animal.
3. Unintentional – A firearm discharge that occurred as a result of an unintentional trigger pull or other unexpected external cause.

The discharge of firearms as a warning is prohibited at any time on or off-duty.

C. Other Firearm Discharges

No use of force investigation is required for any of the following:

1. An intentional discharge for purposes related to training, demonstration, practice, certification or testing while at an authorized range facility, unless the discharge results in injury or death;
2. A discharge while engaged in a lawful and policy-compliant recreational activity, such as hunting or target practice;
3. A discharge by Criminalistics Division personnel for the purpose of scientific examination; and
4. A discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury.

D. **Discharging a Firearm at a Person**

The discharge of a firearm at a person constitutes lethal force and is authorized only pursuant to section II.E, above.

E. Moving Vehicles

The use of lethal force against the occupant of a motor vehicle is only authorized when it is reasonably necessary to:

1. Defend the member or another person against the vehicle occupant's immediate threat of death or serious bodily injury, by means other than the vehicle; or
2. Defend the member or another person against the vehicle operator's use of the vehicle to cause death or serious bodily injury and the member or other person has no reasonable avenue of protection or escape.
 - a. Members are prohibited from intentionally positioning themselves in a location vulnerable to vehicular attack;
 - b. Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator;
 - c. Members shall not discharge a firearm at the operator of the vehicle when the vehicle has passed and is attempting to escape.
3. Members shall consider whether the threat to the member or other persons (including all occupants of the vehicle) is increased by incapacitating the operator with lethal force, considering that if the operator is incapacitated, the vehicle may still be a threat to anyone in the vehicle's path. This threat shall be weighed against the threat posed by the suspect continuing in control of the vehicle.
4. Members shall also consider what risk the use of lethal force would pose to other vehicle occupants when weighed against the threat.
5. **Members shall use available resources and techniques other than force if reasonably safe and feasible to an objectively reasonable officer.**
6. Absent exigent circumstances, the discharge of firearms from a moving vehicle is prohibited.

F. Other Lethal Force

Any force that poses a substantial risk of causing death or serious bodily injury is considered lethal force. This includes the use of the carotid restraint, an intentional strike to the head with an impact weapon or an impromptu impact weapon. Lethal force, regardless of the weapon used, is justified only in life-threatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person.

Lethal force is prohibited when its sole purpose is to affect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury.

V. OTHER REQUIREMENTS

A. Use and Care of Equipment, Control Devices and Firearms

1. While on-duty members shall carry only firearms, safety equipment and control devices that are approved in an official Departmental Order and on which they have successfully completed training. For care of safety equipment, refer to DGO C-4, SAFETY EQUIPMENT.
2. Members shall handle and manipulate a firearm in accordance with Department approved firearms training.

B. Administrative Leave

Members involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that a member acted improperly. While on administrative leave, members shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

C. Counseling Services

Members involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in a SNF entry. Command officers shall ensure involved members are advised of the services available and shall direct their attendance. As needed, members and employees who witness such incidents may also be referred to counseling services.

D. Providing First Aid or Medical Treatment

To the extent possible and without ever compromising safety, members shall ensure that they, when necessary or upon complaint of injury, provide medical first aid and/or emergency medical treatment as soon as practical congruent with their available equipment, resources and first aid training and certification.

In addition, if necessary, professional medical assistance shall be summoned as soon as practical. Refer to TB III-K, FIRST AID.

1. First Aid

First aid includes, but is not limited to, the mere cleaning of a scrape or cut, applying a bandage, flushing of the eyes with water or providing an ice pack. First aid shall be administered by OPD personnel when practical and safe to do so. First aid may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

2. Emergency Medical Treatment

Any treatment beyond first aid, including Cardio-Pulmonary Resuscitation (CPR) and rescue breathing, shall be administered by OPD personnel when practical and safe to do so. Emergency medical treatment may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

3. Hospital Admittance

Admittance to a hospital for the treatment of injuries as a result of any use of force. For the purposes of this order, evaluation or treatment by a medical professional not beyond first aid, as a result of any use of force, shall not be considered hospital admittance.

VI. USE OF SPECIALTY IMPACT MUNITIONS (SIM) DURING CROWD CONTROL

The Department places additional restrictions on the use of SIM during incidents involving Crowd Control and Crowd Management as specified in TB III-G, CROWD

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CONTROL AND CROWD MANAGEMENT and TB III-H, SPECIALTY IMPACT MUNITIONS.

A. Skip Fired Specialty Impact Less Lethal Munitions (Wooden Dowels and Stinger Grenades) **are prohibited**.

1. Any and all less lethal specialty impact weapons designed to be skip fired or otherwise deployed in a nondirectional nontarget specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
2. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a nondirectional nontarget specific manner is also **prohibited** for all crowd control use.

B. Uses of Direct Fired Specialty Impact Less Lethal Munitions (SIM)

Direct Fired SIM are less lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to Drag Stabilized Flexible Batons (DSFB), often referred to as "bean bags", and **shall not be used** for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

1. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, members or the general public, or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.

2. The use of Direct Fired SIM shall cease when the violent or destructive actions cease. These weapons shall not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
3. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
4. When circumstances permit, the supervisor on the incident scene shall make an attempt to accomplish the policing goal without the use of Direct

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Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.

5. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin IIIK, FIRST AID.
6. No member shall use Direct Fired SIM without formal training and certification.
7. Direct Fired SIM shall not be used against a person who is under restraint.
8. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

By Order of

Anne E. Kirkpatrick
Chief of Police

Date Signed: _____



Bringing Oakland's Use of Force Policy into Compliance with AB 392

(updated December 11, 2019)

California State Law PRIOR to AB 392

Penal Code 835a: Force

- To effect arrest, prevent escape, or overcome resistance
- “Reasonable cause to believe that the person committed a public offense”
- Force must be “reasonable”
- Need not retreat or desist

Penal Code 196: Deadly Force

- Necessarily committed to effect arrest, prevent escape, or overcome resistance

Hayes v. Cty. of San Diego (2013)

- California negligence law
- Duty of care extends to the tactical conduct and decisions leading up to use of deadly force

Constitutional Standards

Use of Deadly Force

Tennessee v. Garner (1985)

- Serious physical harm
- Immediate threat to the officer
- Warning, where feasible

Graham v. Connor (1989)

- Standard: Force must be “objectively reasonable”
- Perspective: Evaluated from the perspective of a reasonable officer on the scene, (e.g., based on facts known to officer)
- Totality of the circumstances
 - Severity of the crime
 - Immediate threat to safety of officer or others
 - Active resistance or attempt to escape

The Purpose of AB 392

- To address police shootings and killings in CA
- Including police shootings in Oakland
- Reflected data from changes on stricter policies in Seattle, San Francisco and Campaign Zero

Number of people killed by US police in 2015 at 1,000 after Oakland shooting

Killing of man who allegedly pointed a replica firearm at officers in California is 1,000th entry in Guardian database tracking police killings this year



What did AB 392 do?

- ◉ Changed standard for when officers can use deadly force from whenever “reasonable” to “only when necessary” in defense of human life
 - Puts specific limits on use of deadly force against fleeing and suicidal persons
 - Sets forth clear definitions of “imminent threat” and “deadly force”
- ◉ Considers the **officer’s** conduct leading up to the use of deadly force (e.g., role of officer in escalating/creating situation where deadly force is “necessary”)
- ◉ Requires use of alternatives – officers “shall use other available resources and techniques if reasonably safe and feasible”
- ◉ Removed antiquated standard for defense to homicide and made standards for justified homicide (PC 196) the same as administrative/civil standard (PC 835a)

What did AB 392 Do? – Part 1

Changed Standard for Deadly Force from “Reasonable” to “Necessary”

- Preserves “reasonable force” standard *for non-deadly force only*

835a(b): “Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.”

- Changes standard for *deadly force* to stricter “**necessary**” standard

835(c)(1) Notwithstanding subdivision (b), a **peace officer is justified in using deadly force upon another person only when the officer reasonably believes**, based on the totality of the circumstances, **that such force is necessary** for either of the following reasons:

- (A) **To defend against an imminent threat of death or serious bodily injury** to the officer or to another person.
- (B) **To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury**, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Note: Force must be “necessary” not just to apprehend, but to avoid threat of death.¹⁵¹

What did AB 392 Do? – Part 1

Changed Standard for Deadly Force from “Reasonable” to “Necessary”

- **Central Feature of AB 392** – For deadly force, replaced “reasonableness” standard of *Garner* and *Graham* with stricter “necessary standard”
 - Operative language

“[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary ... To defend against an imminent threat of death or serious bodily injury to the officer or to another person.” (PC 835a(c))
 - Intent language

“[I]t is the intent of the Legislature that peace officers use deadly force **only when necessary** in defense of human life. ” (PC 835a(a)(2))
 - Legislative History

“Unlike existing California statutory law, the provisions of this bill would exceed the standards articulated and set forth by the U.S. Supreme Court in *Graham* and *Garner*.” (Senate Floor Analysis, June 29, 2019)

What did AB 392 Do? – Part 2

Limits on Deadly Force Against Fleeing Persons, New Definitions

Penal Code 835a: Force

- Officer with “reasonable cause to believe that the person committed a public offense” may use *objectively* reasonable non-lethal force to effect arrest, etc.
- But only deadly force if officer reasonably believes, based on totality of circumstances, that force is **necessary**:
- To defend against imminent threat of death or serious bodily injury
- Or to apprehend fleeing person for felony threatened or caused death or serious bodily injury, if officer reasonably believes person will cause death/SBI unless immediately apprehended

Penal Code 196: Deadly Force

Homicide is justifiable if in compliance with Section 835a

How Does Oakland's Use of Force Policy Comply with AB 392?

- Recognizes new “necessary” standard for deadly force?
- Requires officers to use “other available resources and techniques if safe and feasible”?
- Considers the officer's conduct leading to deadly force?
- Limits justification for use of deadly force against a fleeing person?
- Requires warning, if feasible, preceding use of deadly force against fleeing person?
- Deadly force prohibited for person posing danger only to themselves?
- Applies standard to all “deadly force” as defined by statute?
- Defines “imminent” or “immediate threat” consistent with statute?
- Tactical repositioning does not = retreat?
- Folks with disabilities?

Deadly Force in OPD Policy

- OPD current policy OUTDATED: Uses “reasonable” standard for both lethal & nonlethal force throughout
 - “Policy Statement” Section I

C. Members are allowed to **use a reasonable amount of force** based on a totality of the circumstances. Members are required to **de-escalate** the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall **intervene and prevent or stop** the use of unreasonable force by other members.

- “Reasonable Force” (Section II.A)

A. Reasonable Force

Reasonable force is that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.

1. Force must be analyzed under the Fourth Amendment’s objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:

- No distinction between standards for deadly & nondeadly force

Deadly Force in OPD Policy

- Standard for when to use Lethal Force – spread out across policy
 - Lethal Force defined in Section III.E
 - Guidelines for firearms and other specific lethal force set forth in Section IV
 - Firearms: use only if “immediate danger of death or [SBI]”
 - Other lethal force: Different articulation of “immediate threat of death or [SBI]”
 - No “necessary” standard for lethal force (except shooting at moving vehicles)
- **Bottom line: OPD Policy does not contain & is not consistent with AB 392’s new governing “necessary” standard for deadly force**

Deadly Force in OPD Policy – Proposed Changes

- Section I: “Policy Statement”

C. Members are allowed to **use a reasonable amount of force** based on a totality of the circumstances. Members are required to **de-escalate** the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall **intervene and prevent or stop** the use of unreasonable force by other members.

- Proposed changes:

Members are allowed to use a reasonable amount of **less lethal** force based on a totality of circumstances. **Members may use lethal force only when necessary to defend human life.** Members shall de-escalate whenever safe and feasible. Members shall intervene and prevent or stop the use of unreasonable force by other members. **Members shall use available resources and techniques other than force if reasonably safe and feasible to an objectively reasonable officer.**

- Articulate “necessary” standard from AB 392 intent language
- Clearly state different standards governing lethal and nonlethal force
- Include AB 392 language calling for “alternative resources and techniques”

Deadly Force in OPD Policy – Proposed Changes

- Section II.A “Reasonable Force”

- A. Reasonable Force

Reasonable force is that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.

1. Force must be analyzed under the Fourth Amendment’s objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:

- Revision: Clarify that “reasonable force” standard applies only to nondeadly force
 - E.g., “A. Reasonable **Nonlethal** Force”
 - E.g., “**Nonlethal** force must be analyzed under the Fourth Amendment’s objective reasonableness test.”

Deadly Force in OPD Policy – Proposed Changes

- Proposed Changes
 - *Use exact language of AB 392's for new standard. Include operative language in section on Lethal Force (II.E), right after “Reasonable Nonlethal Force”*

E. Lethal Force

Lethal force is any force that creates a substantial risk of causing death or serious bodily injury.

A member may use lethal force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

- (1) To defend against an immediate threat of death or serious bodily injury to the officer or to another person.*
- (2) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.*

- In “Discharge of Firearm” (IV.D) and “Other Lethal Force” (IV.F), delete separate standard and refer to Section II.E.
- Definition of lethal force complies with AB 392.

Officer's Conduct Leading Up to Lethal Force

- AB 392: Considered to evaluate force; part of the “totality of the circumstances”
- Oakland Current Policy: not included in force considerations
- Lethal Force (Section II(E)):

E. Lethal Force

Lethal force is any force that creates a substantial risk of causing death or serious bodily injury. A member may use lethal force to protect themselves or others when the member objectively and reasonably believes that his/her life, or the life of another, is in immediate danger of death or serious bodily injury, based upon the totality of the facts known to the member at the time.

- “Reasonable Force” (Section II(A)):

1. Force must be analyzed under the Fourth Amendment’s objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:
 - a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

2. Factors when determining if force is reasonable include, but are not limited to:
 - a. Physical differences (e.g., age, size, relative strength, skill level, injuries, exhaustion, number of members/employees verses subjects);
 - b. Influence of drugs or alcohol on the subject;
 - c. Proximity of weapons to the subject;
 - d. Training and experience level of the member or employee; and
 - e. Other exigent circumstances.

Officer's Conduct Leading Up to Lethal Force

- Proposed changes:
 - Add exact language from AB 392 language to Policy Statement and Lethal Force sections:
 - **“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.**
 - Add to factors used to determine if force is reasonable:
 - Factors when determining if force is reasonable include . . .
The conduct of the member and the subject leading up to the use of force, e.g. compliance with policy and training in tactics and decisions leading up to the use of force.

Use of Deadly Force Against Fleeing Person

- AB 392: Only when used to arrest for felony threatening death or serious bodily injury and person would pose threat of death or serious bodily injury unless immediately apprehended

- Oakland Current Policy:
 - 3. To apprehend or arrest a person when the following three conditions are met:
 - a. The member has reasonable cause to believe that the person is involved in the commission of a violent felony that includes the use or threatened use of deadly force; and
 - b. The member has reasonable cause to believe that the person poses an immediate threat of death or serious bodily injury to the member or a third person if not immediately apprehended; and
 - c. Other reasonably known and available means of apprehending the person have failed, are inadequate or are immediately unavailable.

- Proposed changes: None.

Warning Prior to Use of Deadly Force

- AB 392: Required, if feasible, before using deadly force against fleeing person
- Oakland Current Policy: Silent. (Warning only for SIM.)
- Proposed changes: Add to Lethal force section
- **In cases described in section II E 2, where feasible, the member shall, prior to the discharge of a firearm, or use of any deadly force, make reasonable efforts to identify themselves as a peace officer and warn the subject that deadly force may be used, unless the member has objectively reasonable grounds to believe the person is aware of those facts.**

Danger a Person Poses to Themselves Not A Basis For Deadly Force

- AB 392: Prohibited basis for using deadly force
- Oakland Current Policy: Silent
- Proposed changes: Add to Lethal force section
- **Members are prohibited from discharging firearms, or using any lethal force, against person who pose a threat solely to themselves if an objectively reasonable officer would believe the person does not pose an immediate threat of death or serious bodily injury to the member or to another person.**

Definition of “Imminent threat”

- Oakland Current Policy:

An Immediate Threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat of death or serious bodily injury if not apprehended without delay.

A person is an immediate threat if the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated.

- AB 392 definition (PC 835a(e)(2)) – partly consistent, partly inconsistent
 - Consistent: A threat of death or serious bodily injury is “imminent,” when person has “present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.”
 - Inconsistent: “An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”
- Proposed change: Delete OPD first sentence, add language from AB 392

Acknowledge Folks with Disabilities

- In Policy statement, add:
- **Individuals with physical, mental health, developmental or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers.**

Debunking Myths About AB 392

- Myth: AB 392 Changes Nothing. The definition of totality is just the Graham standard.
- Fact: The law is clear that the standard has changed from reasonable to necessary.
- Fact: The Legislative history – particularly Senate floor analysis- makes this overwhelmingly clear.
- Fact: The law does use the *perspective* of a reasonable officer, but in no way permits any use of lethal force based on a “reasonableness” standard.

Questions?

Special Order 9196

Documentation of the Use of Force

TRAINING DIVISION

Purpose

Special Order 9196 will immediately change and supersede portions of DGO K-03 Use of Force and DGO K-04 Reporting and Investigating Use of Force.

Special Order 9196 will help promote the Department's commitment to transparency and accountability.

Explanation of Changes

Pointing a Firearm

- ▶ All references related to “intention” related to an officer pointing a firearm at a subject have been eliminated.
- ▶ It was determined that whether or not an officer intentionally, or unintentionally pointed a firearm at a person was subjective and did not truly capture the spirit of the existing policy.
- ▶ “Low ready” position was also deemed subjective and confusing; therefore, it was removed from the body of the policy.

Drawing, Exhibiting, or Unholstering a Firearm - Tracking

- ▶ Even when officers do not point their firearm at a person, the drawing, exhibiting, or unholstering of a firearm by a police officer can be perceived by those involved in or witnessing an incident as threatening or intimidating.
- ▶ To allow the Department to track these incidents, all members who draw, exhibit, or unholster any firearm during an incident, including when the firearm is pointed at a person (a reportable use of force under DGO K-04), shall use the CAD / radio disposition code “KDE.”
 - ▶ NOTE: The CAD / radio disposition code shall be used **IN ADDITION TO** completing the UOF report for a Level 4 Type 22 pointing of a firearm incident.

Drawing, Exhibiting, or Unholstering a Firearm – Tracking

- ▶ The use of the disposition code covers one officer for the entire incident (example: a PRO deploys their rifle from the vehicle and, after a briefing, assists with a building search where no suspects are located. The “KDE” disposition code covers that officer’s actions).
- ▶ Each officer drawing, exhibiting, or unholstering a firearm during an incident shall separately report the “KDE” disposition code, except in the case of officers logged on together as one unit who will use the disposition code “KDE2”.

Drawing, Exhibiting, or Unholstering a Firearm - Defined

Drawing, exhibiting, or unholstering a firearm includes:

- ▶ Drawing the duty handgun in response to a hazardous situation (e.g. high-risk vehicle stop, building search, perimeter post for wanted subject) *whether or not the suspect or any other person is in the presence of the officer*; and
- ▶ Removing the duty shotgun or patrol rifle from the patrol vehicle in response to a hazardous situation *whether or not the suspect or any other person is in the presence of the officer*.

Drawing, Exhibiting, or Unholstering a Firearm - Defined

Drawing, exhibiting or unholstering a firearm does not include administrative or evidentiary possession or movement of firearms such as:

- ▶ Bringing a duty shotgun from a police station to the police vehicle or vice-versa
- ▶ Bringing a patrol rifle from a police station to the police vehicle or vice-versa
- ▶ Drawing a firearm to perform an inspection of the firearm
- ▶ Drawing a firearm to perform a function check of the firearm
- ▶ Drawing a firearm to load a firearm
- ▶ Drawing a firearm to store it in a secure area prior to an interview of a suspect in an interview room
- ▶ Drawing a firearm to secure it in a patrol vehicle prior to booking a prisoner in a secure facility such as Santa Rita Jail, Juvenile Hall, or John George Pavilion

Drawing, Exhibiting, or Unholstering a Firearm - Defined

- ▶ Drawing a firearm to store it in a secure area prior to entering OPD YFSD
- ▶ Drawing a firearm to store it in a secure area prior to entering a secure area which bars firearms
- ▶ Drawing a backup firearm to reposition or better secure the firearm
- ▶ Drawing a firearm during training
- ▶ Displaying a firearm to a competent authority for inspection or repair
- ▶ Collecting a firearm from a citizen for safekeeping; or
- ▶ Collecting a firearm from a crime scene as evidence

Explanation of Changes Cont'd:

“Takedowns”

- ▶ This term was deemed to be insufficient and open to interpretation. Often, it left officers, supervisors, and others unsure whether certain actions were in fact, reportable uses of force.

Injuries

Currently, the standard of evaluating the seriousness of injuries resulting from uses of force is insufficiently clear. Competent and accurate description(s) of injuries is necessary when determining the appropriate level of reportable force.

Change in Terminology

“Takedown” has been defined as:

“Physical force used by a member to cause a person to go to the ground not under their own control.”

Pointing a Firearm at a Person has been defined as:

“Pointing means any time that the line of the muzzle intersects with the body of the subject such that, if the firearm were to discharge, the round would strike that person.”

Language Changes

DGO K-03

Section IV, A, 1 will now read:

- ▶ The pointing of a firearm at another person is a use of force.

Language Changes cont'd

Section IV, A, 2 will now read:

- ▶ A member may point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others. The pointing of a firearm at another person is a use of force. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and when unwarranted, may cast a negative impression on members. Members may draw, exhibit, or unholster their firearm only when justified by appropriate circumstances, and drawing, exhibiting, and unholstering of firearms will be tracked by the Department.

Language Changes cont'd

DGO K-04, Section II, A will now read as follows:

Force options enumerated in DGO K-03 are grouped in the following force levels for reporting and investigation purposes only.

Re-categorization of Certain Force and Force on Restrained Person

- ▶ **Level 2, Type 9** has been re-worded and will now say, "Personal weapon strikes to the head or to a **restrained** subject."
- ▶ **Level 2, Type 30** has been added and will say, "Oleoresin Capsicum (OC / Pepper Spray) or other chemical agent applied to a **restrained** subject."
- ▶ **Level 2, Type 31** has been added and will say, "An Electronic Control Weapon (ECW) is used against a **restrained** subject."
- ▶ **Level 3, Type 16** has been re-named to "All non-carotid takedowns on a **restrained** subject." As a Level 3, a supervisor must respond to the scene and evaluate the force. Depending on the totality of the circumstances, this type of force may be lowered to a Level 4, elevated to a Level 2, or kept as a Level 3 investigation.
- ▶ **Level 3, Type 16a** has been added and will include "Personal weapon strikes other than strikes to the head or to a restrained subject."
- ▶ **Level 4, Type 29** has been added and will say, "All non-carotid takedowns, except on a restrained subject."

Re-categorization of Certain Force and Force on Restrained Person

- ▶ **Level 4, Type 32** has been added. Issues arose where officers were using “force” as defined in K-03 to overcome resistance, but this force was not adequately documented.
- ▶ *This force included such things as: lifting up and carrying people who had gone limp, holding people down on the ground, restraining people in restraint devices (such as the Hobble or WRAP), pulling people out of cars, pushing people into the back of police cars, removing people who were holding on to fixed objects, forcibly pulling people’s hands behind their back when they were resisting, etc.*
- ▶ **To that end**, one additional category of force was added to the Level 4 reporting scheme as Type 32 as follows:
- ▶ Type 32: Any use of force, as defined in DGO K-03, used to
 - ▶ Overcome resistance of a person during an arrest or a detention; or
 - ▶ Defend oneself or another from combative action by another person.
- ▶ And which is not categorized in reporting types 1-31.

Complete list of Force Levels 1 – 4

LEVEL 1

Type 1 – A lethal firearm discharge at a person

Type 2 – Any force resulting in death

Type 3 – Any force creating a substantial risk of causing death

Type 4 – Intentional strikes to the head with an impact or impromptu impact weapon, regardless of injury

Type 5 – Any unintentional firearm discharge with injury or as directed by the CID Commander

Level 1 Cont'd

Type 6 – Any force which results in Serious Bodily Injury (See DGO K-03 II, F) other than the Carotid Restraint

Type 7 – The use of the Carotid Restraint, including a Carotid Takedown, with loss of consciousness

Type 8 – Other. Used for non-enumerated lethal force such as intentionally striking a person with a vehicle, or to denote when Level 2-4 force has been elevated to Level 1 for purposes of investigation;

- ▶ The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made.

Level 2

Type 9 – Personal Weapon strikes to the head. Personal Weapon strikes to a **restrained** subject;

- ▶ A restrained subject is a person who has been **fully** placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble
- ▶ A subject with one handcuff on is not considered restrained

Type 10 – Use of the Carotid Restraint, or Carotid Takedown, **without loss of consciousness**

Type 12 – Impact or impromptu impact weapon strike with contact, regardless of injury;

- ▶ Includes Specialty Impact Munitions (SIM) or any other object
- ▶ Excludes intentional impact or impromptu impact weapon strikes to the head

Level 2 Cont'd

Type 13 – Any use of force resulting in an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid;

- ▶ Excludes Level 1 force types
- ▶ Examples of basic first aid include evaluation by a medical professional to assess a complaint of injury, medical clearance before incarceration, bandaging, ice packs, over-the-counter pain medications, observation, or precautionary scans or evaluations (such as x-rays)
- ▶ Examples of treatments beyond basic first aid include stapling, suturing, setting broken bones, or re-locating dislocated appendages

Level 2 Cont'd

Type 14 – Police canine bites a person's clothing or skin, or causes an injury which requires treatment in a hospital or medical facility beyond what is required by basic first aid

Type 27 – Any unintentional firearms discharge that does not result in injury

Type 30 - Oleoresin Capsicum (OC / Pepper Spray) or other chemical agent applied to a **restrained** subject;

- ▶ A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble
- ▶ A subject with one handcuff on is not considered restrained

Level 2 Cont'd

Type 31 – An Electronic Control Weapon (ECW) is used against a restrained subject;

- ▶ Includes probe mode and drive-stun mode
- ▶ A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble
- ▶ A subject with one handcuff on is not considered restrained

Type 15 – Other. Used for non-enumerated less-lethal force investigated at a Level 2, or to denote when any Level 3-4 force has been raised to Level 2 for purpose of investigation

Level 3

Type 11 – ECW probes impact a subject's clothing or penetrate the skin, or the ECW is used in drive-stun mode where the arc touches the subject's clothes or skin

Type 18 – ECW probes are fired at a subject but miss

Type 16 – All non-carotid takedowns on a **restrained** subject;

- ▶ A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble
- ▶ A subject with one handcuff on is not considered restrained
- ▶ "Takedown" has been defined as "physical force used by a member to cause a person to go to the ground not under their own control."

Type 16a – Personal Weapon strikes other than strikes to the head or to a restrained subject

Type 17 – OC is applied to an unrestrained person;

Level 3 Cont'd

Type 17a – Chemical agent (other than OC) is deployed against or applied to an unrestrained person

Type 19 – Non-striking use of the baton against a person (e.g. prying limbs, moving or controlling a person)

Type 20 – Attempted impact weapon strikes, including SIM, which miss where **no contact is made**

Type 21 – On-duty lethal firearm discharge at an animal, other than dispatching an injured animal

Level 4

Type 22 – Pointing a firearm at a person;

- ▶ Includes pointing a firearm loaded with less-lethal ammunition at a person, except during Crowd Control Operations.

Type 23 – Weaponless defense technique applied to a vulnerable area for the purpose of inducing pain, excluding strikes (e.g. hair grab, pressure to mastoid, trapezius grab)

Type 24 – On-duty firearm discharge to dispatch an injured animal

Type 25 – A weaponless defense technique control hold is applied, for the purpose of inducing pain, including the Twist Lock, Arm-bar, Bent-wrist, or Arm-bar Hammerlock;

- ▶ Any technique utilized to induce pain or overcome resistance is a use of force. This does not include handcuffing or escorting compliant subjects who do not offer resistance.

Level 4 Cont'd

Type 26 – Any Level 3 force incident meeting the criteria to be reported as a Level 4 AND reviewed and approved by a supervisor or commander

Type 28 – A canine deployment where the subject is located by the canine but no bite occurs OR the canine makes non-biting physical contact with the subject with no injury beyond basic first aid;

- ▶ Includes alert or detaining behavior such as barking at, growling at, or circling the subject;
- ▶ Excludes canine deployments where the subject is located by means other than the canine or if no subject is located during the search.

Type 29 – All non-carotid takedowns, except on a restrained subject

Level 4 Cont'd

Type 32 – Any use of force, as defined in DGO K-03, to;

- ▶ Overcome resistance of a person during an arrest or a detention; or
- ▶ Defend any individual from combative action by another person;
- ▶ And which is not categorized in reporting types 1-31

Drawing, Exhibiting, or Unholstering a Firearm

- ▶ All members who draw, exhibit, or unholster any firearm during an incident shall use the CAD and/or radio disposition “KDE” to document such actions.

The above changes **go into effect immediately** and this Special Order will stay in effect until cancelled or until the revision of DGOs K-03 and K-04.



Oakland Neighborhood Opportunity and Accountability Board Overview

The Neighborhood Opportunity and Accountability Board (NOAB) is a community based, restorative, youth diversion initiative in Oakland. The NOAB seeks to divert youth from formal processing into the juvenile justice system, involve community members in what happens with youth who engage in delinquent behavior, improve youth outcomes, and increase public safety.

The Oakland NOAB intends to be a true diversion program, meaning youth who commit lower risk offenses who would otherwise avoid system involvement will *not* participate in the NOAB. Youth who would usually only be counseled and released by police should continue to receive that intervention.

The NOAB is designed to provide an alternative to youth who would otherwise have some degree of system involvement as a result of committing a delinquent offense.

The NOAB will be composed of 6-10 community members with a demonstrated commitment to the well-being of Oakland youth and the greater community.

The goal of the NOAB is to divert youth from any formal processing into the juvenile justice system and therefore primarily seeks to receive referrals at the point of arrest. However, the NOAB also hopes to work with youth who are not initially diverted but are referred by Alameda County Probation and the District Attorney's Office.

Upon referral of an eligible youth that has been processed by the NOAB Coordinator, a meeting known as a NOAB Conference (what in the formal system would be a hearing), will be scheduled. The youth, their family, and any victim wishing to participate will meet with the NOAB. Based on the NOAB Coordinator's Intake Report of the youth, the alleged delinquent offense, and the discussion in the meeting, the NOAB will determine the appropriate intervention for the youth.

The NOAB will connect youth to a wide range of relationships, opportunities, services, and interventions intended to support the positive development of each individual youth. The

NOAB Coordinator will work with partner programs and service providers and to connect all youth, families, and victims to appropriate interventions. The NOAB partner services include:

- Restorative Justice (Restorative Justice for Oakland Youth)
- Case Management and Life Coaching (Community Youth Outreach)
- Family Counseling (Carl B. Metoyer Center for Family Counseling (CBMCFFC))
- Mentoring (The Brotherhood of the Elders Network, Rites of Passage)
- Cognitive Based Therapy (Community Youth Outreach)
- Internship and Fellowship opportunities (National Institute for Criminal Justice Reform, W. Haywood Burns Institute, CURYJ)
- Youth Uprising (physical location of NOAB conferences and possible police drop off site)

By diverting youth who would otherwise be processed through the criminal justice system, the NOAB also seeks to reduce the extremely high cost of juvenile justice. California spends more than \$200,000 annually to incarcerate a single youth in a state facility and counties spend on average \$135,000 per year for a detention bed. A study conducted by the [Justice Policy Institute](#) found that the national average cost to incarcerate a youth is nearly \$150,000. Money saved through the effective implementation of the NOAB would ideally be reinvested into communities and community lead interventions like the NOAB that are focused on positive youth development.

CITY OF OAKLAND



POLICE ADMINISTRATION BUILDING • 455 - 7TH STREET • OAKLAND, CALIFORNIA 94607-3985

Police Department

Telephone Device for the Deaf (510) 777-3333

Patrol Desk (510) 238-3455

Fax (510) 238-2251

September 4, 2018

To whom it may concern:

It is my pleasure to write this letter of support for the youth diversion initiative, Neighborhood Opportunity and Accountability Board (NOAB) on behalf of the Oakland Police Department (OPD).

The NOAB is a diversion from formal processing in the juvenile justice system. Instead of being referred for detention and prosecution, certain youth suspected of delinquent behavior will be sent to neighborhood councils where a group of community leaders, business owners, youth, and family members, will work with the young person, their family and any victim to develop a restorative plan to effectively address the delinquent act and improve the community.

Led by the National Institute for Criminal Justice Reform (NICJR), a cross section of community leaders and service providers have been designing and planning this initiative for many years in Oakland. The Oakland Police Department has been at the table with these community members and continues to serve on the steering committee. OPD believes in responsible diversion and we will support the NOAB's success.*

When implemented effectively, the Neighborhood Opportunity and Accountability Boards can improve youth outcomes, develop communities, and increase public safety. OPD has agreed to partner with the NOAB, including the training of officers and having our juvenile intake division refer youth to the initiative. OPD looks forward to working with the NOAB and we highly recommend and encourage funders to support this strategy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anne E. Kirkpatrick". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Anne E. Kirkpatrick
Chief of Police
Oakland Police Department

Oakland Neighborhood Opportunity and Accountability Board Protocols

NOAB DRAFT Mission Statement

The Neighborhood Opportunity and Accountability Board (NOAB) seeks to provide an alternative to the harmful, ineffective, and expensive juvenile justice system by utilizing a community lead process that prioritizes restorative justice, healing, and making strategic connections between youth and support systems within the community.

The NOAB is a community based, restorative, youth diversion initiative in Oakland. The NOAB seeks to divert youth from formal processing into the juvenile justice system, involve community members in what happens with youth who engage in delinquent behavior, improve youth outcomes, provide a space for healing and increase public safety.

1. Target geographical area

The Oakland NOAB will begin with a focus on East Oakland (NOAB Zone). **The NOAB Zone will run between Fruitvale Avenue and the San Leandro Border.** Juvenile arrest data will be used to inform any further targeting of specific neighborhoods.

- We may consider a smaller pilot catchment area of 73rd Ave to the San Leandro border.

The NOAB will begin working with eligible youth who live in Oakland *and* commit a delinquent offense in the NOAB Zone. Eventually, the NOAB will expand to all youth who commit a delinquent offense in the NOAB Zone and live in Alameda County.

2. Target Population

The Oakland NOAB intends to be a true diversion program, meaning youth who commit lower risk offenses who would otherwise avoid system involvement will *not* participate in the NOAB. Youth who would usually only be counseled and released by police should continue to receive that intervention.

The NOAB is designed to provide an alternative to youth who would otherwise have some degree of system involvement as a result of committing a delinquent offense.

- a. Tier 1: Youth committing their 2nd misdemeanor offense
 - i. Assuming a youth who committed their first-time misdemeanor would not be formally processed in the youth justice system, the lowest risk

youth that will participate in the NOAB are youth committing their second misdemeanor offense.

ii. Referral to NOAB with “no pending charge”

1. OPD will refer these youth to the NOAB with “no pending charge”, meaning no formal charges are filed or held against the youth and the NOAB becomes solely responsible for determining the appropriate response to the youth’s offense.

b. Tier 2: Youth committing their 3rd or more misdemeanor offense

- Process same as Tier 1

c. Tier 3: Youth committing a non-violent felony

- i. Youth committing non-violent felonies will be referred by OPD to the NOAB with their **charge held in abeyance**, meaning involvement in the NOAB accountability plan will result in no formal charges against the youth being filed but refusal or failure to participate will result in the case returning to OPD for referral to Probation and the DA’s office for formal processing.

NOAB Referral Criteria

The Oakland NOAB Pilot **target population** are youth:

- 12-17 years old
- Live in or committed their offense in East Oakland (between Fruitvale and San Leandro Border)
- Are accused of committing theft, auto-theft, auto-burglary, burglary and/or simple assault.

But the Oakland NOAB will accept additional youth as well. Any youth meeting the following criteria can be referred to the Oakland NOAB:

- Any youth who was going to be transported to juvenile hall for detention
- Any youth who a Notice to Appear was going to be issued to
- If the youth was going to be counseled and released, do NOT refer him/her, continue to counsel and release.
- Youth with their second or more misdemeanor
- The Oakland NOAB will accept, if the officer/Department is willing to refer, youth with any level of offense except 707b offenses.

3. NOAB Composition

The NOAB will be composed of 6-10 community members with a demonstrated commitment to the well-being of Oakland youth and the greater community. NOAB members will receive stipends for their service at an amount to be determined.

The NOAB will include but, not necessarily be limited to:

- i. Community and faith leaders
- ii. Residents of the neighborhood where offense(s) occurred
- iii. Youth leaders
- iv. Formerly incarcerated individuals
- v. Victims of crime
- vi. Business owners
- vii. Youth development professionals
- viii. Educators

4. NOAB Process

Police officers making an arrest of an eligible youth (based on the above criteria), will confer and get approval from the Oakland Police Department (OPD) Youth Intake Sergeant (desk) for referral to the NOAB. The OPD Youth Intake Sergeant will also screen all youth arrests for eligibility for NOAB referrals. The ultimate goal is to refer all eligible youth to the NOAB. Youth and their families will receive a referral similar to the current Notice to Appear process. Youth and their families will be referred to the NOAB Coordinator for further assessment.

The goal of the NOAB is to divert youth from any formal processing into the juvenile justice system and therefore primarily seeks to receive referrals at the point of arrest. However, the NOAB also hopes to work with youth who are not initially diverted but are referred by Alameda County Probation and the District Attorney's Office.

- NOAB Coordinator:

The NOAB will be initially staffed with a NOAB Coordinator. The NOAB Coordinator will be the main point of contact for referrals from OPD, will make the initial outreach to NOAB youth, their families, and any victims. The NOAB Coordinator may administer a risk assessment developed by the NOAB and help determine the appropriate tier of intervention for the youth. The NOAB Coordinator will meet with the youth, their families, and any victims, and develop a report to the NOAB and schedule a NOAB Conference. The NOAB Coordinator will also ensure all intervention referrals and services are made based on the NOAB Conference. The NOAB Coordinator will track the progress of all youth, including receiving regular reports from the intervention programs and will schedule further NOAB Conferences as needed. The NOAB Coordinator will maintain youth files, develop monthly progress reports, and make regular reports to the NOAB members and stakeholders committee.

5. NOAB Conference

Upon referral of an eligible youth that has been processed by the NOAB Coordinator, a meeting known as a NOAB Conference (what in the formal system would be a hearing), will be scheduled. The youth, their family, and any victim wishing to participate will meet with the NOAB. The youth will have an opportunity to be heard and will help determine the supports they need. Based on the NOAB Coordinator's Intake Report of the youth, the alleged delinquent offense, and the discussion in the meeting, the NOAB will determine the appropriate support and accountability plan with the youth.

Participation in the NOAB Conference should be voluntary for all parties. Everyone involved in the process will also be briefed and prepared so there are no surprises. Youth will be able to invite family and other loved ones to attend the NOAB Conference.

6. NOAB Program

The NOAB will connect youth to a wide range of relationships, opportunities, services, and interventions intended to support the positive development of each individual youth. The NOAB Coordinator will work with partner programs and service providers to connect all youth, families, and victims to appropriate services and supports. The NOAB partner services include:

- Restorative Justice (Restorative Justice for Oakland Youth)
- Case Management and Life Coaching (Community & Youth Outreach)
- Family Counseling (Carl B. Metoyer Center for Family Counseling (CBMCFFC))
- Mentoring (The Brotherhood of the Elders Network, Rites of Passage)
- Cognitive Based Therapy (Community & Youth Outreach)
- Internship and Fellowship opportunities (National Institute for Criminal Justice Reform, W. Haywood Burns Institute, CURYJ)

In addition to the above program that will provide services and supports to youth and families when appropriate, Youth Uprising will serve as the NOAB hub, providing a physical location for police officers to drop youth off as an alternative to juvenile hall and it will be the host site for NOAB Conferences.

The family of the youth will be strongly encouraged to participate in the youth's NOAB conference. The NOAB will seek to provide support and incentive for family participation. For support/accountability plans that include family services or counseling, the youth's family will be required to participate.

When appropriate and feasible, the NOAB will consider providing restitution to victims, particularly in cases where restitution is a barrier to engaging in a restorative process.

7. Cost Savings

By diverting youth who would otherwise be processed through the criminal justice system, the NOAB also seeks to reduce the extremely high cost of juvenile justice. California spends more than \$200,000 annually to incarcerate a single youth in a state facility and counties spend on average \$135,000 per year for a detention bed. A study conducted by the [Justice Policy Institute](#) found that the national average cost to incarcerate a youth is nearly \$150,000. Money saved through the effective implementation of the NOAB would ideally be reinvested into communities and community lead interventions like the NOAB that are focused on positive youth development.



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Edits to Resolution 19-01 re: Bey Investigation Contract
Date:	January 3, 2020
Prepared & Approved by:	John Alden, CPRA Executive Director

Action Requested:

The Community Police Review Agency (CPRA) requests that the Oakland Police Commission approve the attached revised version of Resolution 19-01 as requested by the selected contractor for the Bey Investigation, the Knox & Ross Law Group.

Background:

On October 24, 2019, the Commission approved Resolution 19-01 to engage the services of the Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147. On that date, the Commission discussed what sort of contractors would be most appropriate for the case. Based on that conversation, the Commission opted to structure the proposed contract with the Knox & Ross Law Group such that all work would be completed by licensed investigators.

Since that date, the Knox & Ross Law Group has asked that Resolution 19-01 be re-written to allow for the work to be done by other sorts of contractors, including licensed attorneys. This edit may trigger the need to secure the City Attorney's approval of the Knox and Ross Law Group as the selected contractor. CPRA staff expects Jason Ross of the Knox & Ross Law Group to appear before the Commission at the Commission's January 9, 2020, meeting, to further discuss this issue.

Contract Authority

On July 16, 2019, The Oakland City Council approved Ordinance No. 13547 C.M.S., granting the Police Commission certain authority to approve contracts on their own behalf. On September 12, 2019, the Oakland Police Commission received contracts training related to that authority.

This item continues that process with respect to the contract to investigate the Bey cases.

Attachment (12a):

Draft Revised Resolution 19-01

OAKLAND POLICE COMMISSION

RESOLUTION NO. 19-01

RESOLUTION AUTHORIZING THE COMMUNITY POLICE REVIEW AGENCY (CPRA) EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH KNOX & ROSS LAW GROUP FOR INVESTIGATION AND REVIEW OF CPRA CASES 07-0538, 13-1062, AND 16-0147 FOR AN AMOUNT NOT-TO-EXCEED \$49,999.

WHEREAS, the voters of the City of Oakland voted yes for Measure LL on November 8, 2016, which established the Oakland Police Commission; and

WHEREAS, Measure LL amended the Oakland City Charter to add section 604, entitled "Police Commission;" and

WHEREAS, the Oakland City Council adopted Ordinance No. 2.04.022 on July 9, 2019, amending Oakland Municipal Code Chapter 2.04 *Purchasing System*, to add section 2.04.022 to authorize the Police Commission to enter Professional Service Agreements necessary to fulfill its duties as defined in Measure LL, codified in section 604 of the Oakland City Charter; and

WHEREAS, all Police Commission contract approvals require an affirmative vote of four (4) or more members of the Commission who are designated to vote at the time the action is taken to approve a contract; and

WHEREAS, the Community Police Review Agency (CPRA) Executive Director is authorized on behalf of the City of Oakland to enter into Professional Services Agreements properly approved by the Commission and shall be the contract administrator; and

WHEREAS, all contracts approved by the Police Commission are subject to the competitive and other processes and procedures required under Oakland Municipal Code Chapter 2.04 *Purchasing System*; and

WHEREAS, on May 9, 2019, the Police Commission voted to direct the CPRA Executive Director to contract with an outside investigator in review of CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, the Police Commission solicited and received three bids from Henry Gage, III, Knox & Ross Law Group, and Law Offices of Amy Oppenheimer for investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, on July 25, 2019, the Police Commission was informed that Henry Gage, III and Law Office of Amy Oppenheimer had withdrawn their proposals from further consideration; and the Commission chose to continue to search for an outside investigator; and

WHEREAS, Knox & Ross Law Group being the sole responsible bidder is being recommended to perform investigation related to CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, on October 10, 2019, the Police Commission voted to engage the services of Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147; now, therefore be it

RESOLVED, that the Oakland Police Commission authorize the CPRA Executive Director to enter into a Professional Services Agreement with Knox & Ross Law Group for investigation and whether there is enough evidence to reopen CPRA cases 07-0538, 13-1062, and 16-0147; and be it

FURTHER RESOLVED, the total amount of the Agreement shall be for a not-to exceed amount of \$49,999; and be it

FURTHER RESOLVED, that the said Agreement with Knox & Ross Law Group shall be executed contingent upon available funding; and be it

FURTHER RESOLVED, that the CPRA Executive Director has identified available funding in the amount of \$49,999 in General Purpose Fund (1010), Police Commission Organization (66111), Administrative Project (1003737), Program (IP06); and be it

FURTHER RESOLVED, that the CPRA Executive Director is authorized to negotiate and finalize a scope of investigative services with Knox & Ross Law Group for investigation and whether there is enough evidence to reopen CPRA cases 07-0538, 13-1062, and 16-0147, in an amount not to exceed \$49,999, ~~with all work to be conducted by licensed investigators.~~

IN POLICE COMMISSION MEETING, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
JAN RUS, IV
Policy Analyst, Community Police Review Agency
City of Oakland, California



OAKLAND POLICE COMMISSION MEETING MINUTES - DRAFT

July 25, 2019

6:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 6:36 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Mubarak Ahmad, Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioners Present: Chris Brown

Counsel for this meeting: Kevin Siegel

The Commission adjourned to closed session in City Hall Building Bridges room. The open session section of the meeting commenced at 7:13 p.m.

III. Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Review of administratively-closed CPRA cases. Gov't Code § 54957(b)

The Commission took no formal action in closed session and began a discussion regarding the assessment of employee performance. The Commission did not engage in a review of administratively closed CPRA cases.

Comments were provided by the following public speakers:
There were no public speakers on this item.

IV. Welcome, Purpose, and Open Forum

Comments were provided by the following public speakers:

Elise Bernstein
Lorelei Bosserman
Assata Olugbala
Saleem Bey
Oscar Fuentes

V. Police Commission and CPRA Audits Update

City Auditor Courtney Ruby provided an update on the status of the Police Commission and CPRA audits which are required by City Charter Section 604(a)(4).

Comments were provided by the following public speakers:

Rashidah Grinage
Assata Olugbala
Saleem Bey

No action was taken on this item.

VI. OPD Supervised Release Search Policy R-02

OPD Chief Anne Kirkpatrick, Deputy Chief LaRonne Armstrong, Sergeant Joe Turner, and Planning and Research Manager Andy Best discussed the plan for trainings on the newly adopted Department General Order R-02, supervised release search policy.

Comments were provided by the following public speakers:

Rashidah Grinage
Mary Vail
Lorelei Bosserman
Assata Olugbala
Saleem Bey

No action was taken on this item.

VII. SB1421 Compliance Update

Deputy Chief LaRonne Armstrong provided an update on Senate Bill 1421 compliance.

Comments were provided by the following public speakers:

Assata Olugbala
Mary Vail
Saleem Bey

No action was taken on this item.

VIII. OPD Chief's Annual Report

The Commission discussed what information may be required in the OPD Chief's annual report.

Comments were provided by the following public speakers:

Rashidah Grinage
Assata Olugbala
Saleem Bey
Mary Vail

No action was taken on this item.

IX. Pawlik Investigation Update

The Commission discussed the report that was prepared by the Discipline Committee.

Comments were provided by the following public speakers:

Oscar Fuentes
Saleem Bey

No action was taken on this item.

X. Commission Subpoenas Related to CPRA

The Commission discussed the current status of the responses to subpoenas previously issued.

Comments were provided by the following public speakers:

Rashidah Grinage
Mary Vail
Saleem Bey

A motion was made by Edwin Prather, seconded by José Dorado, that the Commission continue to pursue subpoenas against the subpoenaed parties, receive responses to subpoenas previously issued, and formally ask the City Attorney's Office to engage conflict counsel to advise the Commission regarding the subpoenas. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith

No: 0

Abstained: Ahmad

XI. Bey Case Review

The Commission discussed the status of the bids received from Henry Gage, III and the Law Offices of Amy Oppenheimer. Both of those bids were withdrawn.

Comments were provided by the following public speakers:

Henry Gage, III
Saleem Bey
Oscar Fuentes
Assata Olugbala

No action was taken on this item.

XII. OPD's Use of Force Policy

The Commission discussed the next steps in addressing OPD's Use of Force policy. Regina Jackson, in her role as Chair, created an Ad Hoc Use of Force Policy Committee consisting of Commissioners Anderson, Harris, and Jackson.

Comments were provided by the following public speakers:

Saleem Bey
Assata Olugbala

No action was taken on this item.

XIII. Meeting Minutes Approval

The Commission voted to approve meeting minutes from closed sessions on February 4 and April 25, 2019.

A motion was made by José Dorado, seconded by Thomas Smith, to continue the meeting to 11:00 p.m. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Jackson, and Smith

No: Harris and Prather

Comments were provided by the following public speakers:
There were no public speakers on this item.

A motion was made by José Dorado, seconded by Thomas Smith, to approve the minutes from February 4, 2019. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Jackson, and Smith

No: 0

Abstained: Harris and Prather

A motion was made by José Dorado, seconded by Mubarak Ahmad, to approve the minutes from April 25, 2019. The motion carried by the following vote:

Aye: Ahmad, Dorado, Jackson, and Prather

No: 0

Abstained: Anderson, Harris, and Smith

XIV. Police Commission Retreat

The Commission discussed potential venues for the retreat on September 14, 2019.

Comments were provided by the following public speakers:
Assata Olugbala

No action was taken on this item.

XV. August and September Meetings

The Commission took a poll on expected attendance at the August 8th meeting and due to an anticipated lack of quorum chose to cancel that meeting. The Commission also cancelled the September 26th meeting due to the NACOLE conference and an anticipated lack of quorum.

Comments were provided by the following public speakers:
There were no public speakers on this item.

A motion was made by Regina Jackson, seconded by José Dorado, to cancel the August 8th and September 26th meetings. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Jackson, Prather, and Smith
No: Harris

A motion was made by Regina Jackson, seconded by Mubarak Ahmad, to table items XVI and XVII. The motion carried by the following vote:

**Aye: Ahmad, Anderson, Dorado, Jackson, Prather, and Smith
No: Harris**

XVI. Committee/Liaison/Other Commissioner Reports (*this item was tabled to the next agenda*)

No public comments were provided on this item.

XVII. Agenda Setting and Prioritization of Upcoming Agenda Items (*this item was tabled to the next agenda*)

No public comments were provided on this item.

XVIII. Adjournment

A motion was made by Edwin Prather, seconded by Thomas Smith, to adjourn the meeting at 11:08 p.m. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, Jackson, Prather, and Smith
No: 0



OAKLAND POLICE COMMISSION SPECIAL MEETING MINUTES - DRAFT

August 22, 2019

5:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 5:35 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Mubarak Ahmad, José Dorado, Ginale Harris, Regina Jackson, and Edwin Prather. Quorum was met.

Commissioners Absent: Tara Anderson and Thomas Smith (*both arrived during Item III*)

Alternate Commissioners Absent: Chris Brown

Counsel for this meeting: Sergio Rudin

The Commission adjourned to closed session in City Hall Building Bridges room. The open session section of the meeting commenced at 6:53 p.m.

III. Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE – Gov't Code § 54957(b)

The Commission directed CPRA on a pending disciplinary matter.

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION – Gov't Code § 54956.9(d)(1)

Name of case: Negrete, et al v City of Oakland, et al, Alameda County Superior Court Case No. RG19030784

The Commission announced that the law offices of Jackson Lewis will be representing the City and the Commission on the case.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Gov't Code § 54957(b)

Title: CPRA EXECUTIVE DIRECTOR

No action was taken on this item.

Chair Regina Jackson took another Roll Call

Commissioners Present: Mubarak Ahmad, Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioners Present: Chris Brown

Counsel for this meeting: Sergio Rudin

IV. Welcome, Purpose, and Open Forum (2 minutes per speaker)

Comments were provided by the following public speakers:

Rashidah Grinage
Elise Bernstein
Bruce Schmiechen
Michelle Lanzanea
Reisa Jaffe
John Lindsay-Poland
Cathy Leonard
Mary Vail
Lorelei Bosserman
Gene Hazzard
Assata Olugbala
Saleem Bey

V. DGO M-03.2 Policy

The Commission discussed amendments to the order for OPD Department General Order (DGO) M-03.2 and voted to approve them.

Comments were provided by the following public speakers:

Gene Hazzard
Lorelei Bosserman
Rashidah Grinage
Assata Olugbala
Saleem Bey

A motion was made by José Dorado, seconded by Thomas Smith, to adopt the DGO M-03.2 policy presented as attachment five in the agenda packet. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, Jackson, Prather, and Smith

No: 0

VI. Review of CPRA Pending Cases and Completed Investigations

Executive Director John Alden reported on the Agency's pending cases and completed investigations.

Comments were provided by the following public speakers:

Assata Olugbala
Lorelei Bosserman
Rashidah Grinage
Gene Hazzard

A motion was made by José Dorado, seconded by Mubarak Ahmad, to accept the CPRA report on pending and completed investigations. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, Jackson, Prather, and Smith
No: 0

VII. OBOA Complaint

The Commission discussed the Oakland Black Officer’s Association’s (OBOA) suggestion of disparate and/or racist implications for OPD hiring and discipline practices and the complaint filed with CPRA.

Comments were provided by the following public speakers:

Gene Hazzard
Assata Olugbala
Saleem Bey
Bruce Schmiechen
Oscar Fuentes
Lorelei Bosserman

No action was taken on this item.

VIII. Inspector General Position Update

The Commission discussed the Inspector General job description approved by the Civil Service Commission.

Comments were provided by the following public speakers:

Oscar Fuentes
Anne Janks
Saleem Bey

No action was taken on this item.

IX. CPRA Investigator Staffing

John Alden provided an update on filling the vacant Complaint Investigator II positions.

Comments were provided by the following public speakers:

Assata Olugbala
Saleem Bey
Bruce Schmiechen
Jane Kramer

No action was taken on this item.

The Commission took a recess from 9:46 p.m. to 9:56 p.m.

X. NSA Case Conference Update

The Chair and Vice Chair provided an update on the Negotiated Settlement Agreement (NSA) Case Conference on August 21, 2019.

Comments were provided by the following public speakers:

Rashidah Grinage

Assata Olugbala

Saleem Bey

No action was taken on this item.

XI. Commission Subpoenas Related to CPRA

The Commission discussed the receipt of responses to subpoenas previously issued.

Comments were provided by the following public speakers:

There were no public speakers on this item

A motion was made by Edwin Prather, seconded by Thomas Smith, to provide the subpoenaed materials to Mr. Alden for his review only, and that Mr. Alden determine whether there need be any follow up or an investigation into the matter and that he report back to the Commission on an aggendized item within 60 days. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith (*Commissioner Ahmad had left by this point in the meeting*)

No: 0

A motion was made by Regina Jackson, seconded by José Dorado, to extend the meeting to 11:00 p.m. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith

No: 0

XII. Bey Case Review

Vice Chair Harris provided an update on the Bey Case.

Comments were provided by the following public speakers:

Assata Olugbala

Saleem Bey

No action was taken on this item.

XIII. Meeting Minutes Approval

The Commission voted to approve meeting minutes from May 9, 2019 with the following edits: on page two the last sentence of Chair Jackson's speech, "she" should be replaced by "I"; on page three the first line should read "the amended motion" and not "the first motion," and that first full paragraph should read "a second motion was made by Commissioner Prather that we issue a subpoena for all documents including

communications.” Two lines down the phrase “let’s make those” should be deleted, and the period immediately preceding that phrase should be changed to a comma.

Comments were provided by the following public speakers:
There were no public speakers on this item.

A motion was made by Edwin Prather, seconded by José Dorado, to approve the May 9, 2019 minutes subject to the edits that were made. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Prather
No: 0
Abstained: Smith

XIV. Committee/Liaison/Other Commissioner Reports

Tara Anderson provided an update on Assembly Bill (AB) 392 which changes when police officers engage in use of force, and SB230 that would emphasize certain training requirements. José Dorado provided an update on the Safe Oakland Summit on June 5, 2019.

Comments were provided by the following public speakers:
Rashidah Grinage

No action was taken on this item.

XV. Commission Retreat

The Commission discussed the retreat scheduled for September 14, 2019 at the Waterfront Hotel in Oakland.

Comments were provided by the following public speakers:
There were no public speakers on this item.

No action was taken on this item.

XVI. Agenda Setting and Prioritization of Upcoming Agenda Items

The Commission engaged in a working session and discussed agenda items for the upcoming Commission meeting: RFQ for independent counsel; Commission subpoenas related to CPRA; Bey case review; use of force policy and public hearing; OPD towing policy; OPD social media policy; and rule 2.19 Chief of Police for Cause Assessment.

Comments were provided by the following public speakers:
Anne Janks

No action was taken on this item.

XVII. Adjournment

A motion was made by Ginale Harris, seconded by José Dorado, to adjourn the meeting at 11:00 p.m. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith
No: 0



OAKLAND POLICE COMMISSION

MEETING MINUTES - DRAFT

September 12, 2019

6:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 6:30 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, Edwin Prather, and Thomas Smith. Quorum was met.

Commissioners Absent: Mubarak Ahmad

Alternate Commissioners Absent: Chris Brown (*arrived during Item IV*)

Counsel for this meeting: Sergio Rudin

III. Public Comment on Closed Session Items

Comments were provided by the following public speakers:

Saleem Bey

Rashidah Grinage

The Commission adjourned to closed session in City Hall Building Bridges room. The open session section of the meeting commenced at 7:38 p.m.

IV. Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE - Gov't Code § 54957(b)

Review of administratively-closed CPRA cases.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Gov't Code § 54957(b)

Title: Chief of Police

V. Determinations of Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE - Gov't Code § 54957(b)

Review of administratively-closed CPRA cases.

The Commission voted to administratively close CPRA case 18-1054. The vote was as follows:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith

No: 0

PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Gov't Code § 54957(b)

Title: Chief of Police

There were no reportable actions on this item.

Chair Regina Jackson took another Roll Call

Commissioners Present: Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, Edwin Prather, and Thomas Smith. Quorum was met.

Commissioners Absent: Mubarak Ahmad

Alternate Commissioners Present: Chris Brown

Counsel for this meeting: Sergio Rudin

VI. Welcome, Purpose, and Open Forum

Comments were provided by the following public speakers:

Michele Lazaneo

Members of Jonathan Bandabaila's Family and Friends

Assata Olugbala

Saleem Bey

VII. Contracting Policies and Procedures Training

Deputy City Administrator Stephanie Hom delivered training to the Commission on the City's contracting policies and procedures.

Comments were provided by the following public speakers:

Rashidah Grinage

Jane Kramer

Assata Olugbala

Maureen Benson

No action was taken on this item.

VIII. OPD Plan for Working with the City's Social Media Policy

Officer Johnna Watson discussed OPD's plan for working with the City's Social Media Policy.

Comments were provided by the following public speakers:

Assata Olugbala

No action was taken on this item.

IX. OPD Towing Policy Regarding Victims of Crime

OPD Personnel Manager Kiona Suttle discussed OPD's towing contract and how that relates to towing the cars of victims of crime.

Comments were provided by the following public speakers:

Rashidah Grinage

No action was taken on this item.

X. Review of CPRA Pending Cases and Completed Investigations

Executive Director John Alden reported on the Agency's pending cases and completed investigations.

Comments were provided by the following public speakers:

Rashidah Grinage

No action was taken on this item.

XI. Scheduling a Public Hearing on Use of Force

The Commission discussed scheduling a public hearing on the use of force and decided on November 2, 2019 as the preferred date.

Comments were provided by the following public speakers:

Bruce Schmiechen

Cat Brooks

Assata Olugbala

John Lindsay-Poland

No action was taken on this item.

XII. Bey Case Review

Vice Chair Harris announced that a firm is interested in performing investigative services related to the Bey case and that a proposal will be included in a future agenda.

Comments were provided by the following public speakers:

Oscar Fuentes

Assata Olugbala

Saleem Bey

Maureen Benson

No action was taken on this item.

Tara Anderson left the meeting at this point.

A motion was made by José Dorado, seconded by Ginale Harris, to extend the meeting from 10:30 p.m. to 10:40 p.m. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, and Smith

No: Prather

XIII. Committee/Liaison/Other Commissioner Reports

José Dorado provided an update on his request to David Harris of Urban Strategies to give a presentation on the Safe Oakland Summit.

Comments were provided by the following public speakers:
There were no public speakers on this item.

No action was taken on this item.

XIV. Commission Retreat

The Commission discussed the retreat scheduled for September 14, 2019 at the Waterfront Hotel in Oakland.

Comments were provided by the following public speakers:
There were no public speakers on this item.

No action was taken on this item.

XV. Agenda Setting and Prioritization of Upcoming Agenda Items

The Commission engaged in a working session and discussed agenda items for the upcoming Commission meeting: grant that OPD received for use of force training; draft ordinance on militarized equipment; Bey case review; report from Commission retreat; OPD's automobile towing policy towards the homeless and low-income citizens; review of Commission and CPRA budgets.

Comments were provided by the following public speakers:
Maureen Benson
Henry Gage, III

No action was taken on this item.

XVI. Adjournment

A motion was made by Edwin Prather, seconded by Regina Jackson, to adjourn the meeting at 10:36 p.m. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, Prather, and Smith
No: 0



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Pending Agenda Matters List
Date:	January 3, 2020
Requested by:	Police Commission
Prepared by:	Chrissie Love, Administrative Analyst II
Reviewed by:	John Alden, CPRA Executive Director

Action Requested:

Review Pending Agenda Matters List and decide on which, if any, to include in upcoming agendas.

Background:

The following exhaustive list was begun in early 2018 and includes items submitted for consideration on future agendas. Community members may suggest agenda items by completing and submitting the Agenda Matter Submission Form found on the Commission's webpage.

Discussion:

The following trainings must be delivered in open session and should be scheduled soon:

Subject Matter	Provider	Dates Offered or Scheduled (if known)
<i>Mandated by City Charter section 604 (c)(9) and Enabling Ordinance section</i>		
California's Meyers Miliias Brown Act (MMBA) and Public Employment Relations Board's Administration MMBA (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	Planning for 3.12.20
Civil Service Board and Other Relevant City Personnel Policies and Procedures (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	Planning for 2.27.20
Memoranda of Understanding with Oakland Police Officers Association and Other Represented Employees (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	Planning for 3.26.20

Attachments:

Pending Agenda Matters List

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
2	Commissioner Trainings	1/1/2018	<p>Complete trainings mandated by City Charter section 604 (c)(9) and Enabling Ordinance section 2.45.190</p> <p>Some trainings have deadlines for when they should be completed (within 3 months, 6 months, etc.)</p> <p>Several trainings were delivered in open session and have been recorded for future use</p>	<p>The following trainings must be done in Open Session:</p> <ol style="list-style-type: none"> 1. California's Meyers Milias Brown Act (MMBA) and Public Employment Relations Board's Administration of MMBA (planning for 3.12.20) 2. Civil Service Board and Other Relevant City Personnel Policies and Procedures (planning for 2.27.20) 3. Memoranda of Understanding with Oakland Police Officers Association and Other Represented Employees (planning for 3.26.20) 4. Police Officers Bill of Rights (done 12.12.19) 	High	Ongoing	2/27/2020	
3	Military Police Equipment Policy	9/10/2019		Discussion of an ordinance drafted by the Coalition for Police Accountability for OPD equipment use and acquisition.	High		1/23/2020	

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
4	Notification of OPD Chief Regarding Requirements of Annual Report	1/1/2018	Commission must notify the Chief regarding what information will be required in the Chief's annual report	<p>The Chief's report shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> 1. The number of complaints submitted to the Department's Internal Affairs Division (IAD) together with a brief description of the nature of the complaints; 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated; 3. The number of investigations completed by IAD, and the results of the investigations; 4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions; 5. Revisions made to Department policies; 6. The number and location of Department sworn employee-involved shootings; 7. The number of Executive Force Review Board or Force Review Board hearings and the results; 8. A summary of the Department's monthly Use of Force Reports; 9. The number of Department sworn employees disciplined and the level of discipline imposed; and 10. The number of closed investigations which did not result in discipline of the Subject Officer. <p>The Chief's annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7</p>	High	June 14, 2018 and June 14 of each subsequent year		Dorado

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
5	CPRA Report on App Usage	10/10/2018		Report from staff on usage of app.	High			
6	Create Ad Hoc Committee To Determine if Commission Can Open or Re-Open an Investigation	10/2/2018		The Commission has heard from community members regarding concerns about what the Commission's power actually is regarding opening and re-opening investigations.	High			
7	Finalize Bylaws and Rules	1/24/2019			High			Gage
8	Measure LL Revisions	10/1/2019	The Commission will discuss and provide feedback on the draft revision of Measure LL provided by the Coalition for Police Accountability to the Commission and City Council President Keeler.		High			Gage
9	Social Media Communication Responsibilities, Coordination, and Policy	7/30/2019		Decide on social media guidelines regarding responsibilities and coordination.	High			
10	Determine Outstanding Issues in Meet and Confer and the Status of M&C on Disciplinary Reports	10/6/2018		Need report from police chief and city attorney. Also need status report about collective bargaining process that is expected to begin soon.	High			

Police Commission Pending Agenda Matters List

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11	Discipline: Second Swanson Report Recommendations – Have These Been Implemented?	10/6/2018		Supervisor discipline Process for recommending improvements to policies, procedures and training, and to track and implement recommendations Tracking officer training and the content of training Comparable discipline imposed – database of discipline imposed, demonstrate following guidelines IAD civilian oversight for continuity in IAD Improved discovery processes Permanent arbitration panel implemented from MOU OPD internal counsel Two attorneys in OCA that support OPD disciplines and arbitration Reports on how OCA is supporting OPD in discipline matters and reports on arbitration Public report on police discipline from Mayor’s office OIG audit includes key metrics on standards of discipline	High		1/23/2020	
12	Public Hearing on Use of Force	4/22/2019		Work with community on presenting a public hearing on use of force.	High		1/23/2020	Harris
13	Receive a Report from the Ad Hoc Committee on CPRA Appellate Process	6/13/2019	Once the Commission has an outside counsel, work with them on determining an appellate process	When a draft process is determined, bring to the Commission for a vote.	High		1/23/2020	Brown, Gage, Prather
14	Reports from OPD	10/6/2018	Commission to decide on what reports are needed prior to receiving them.	Receive reports from OPD on issues such as: response times; murder case closure rates; hiring and discipline status report (general number for public hearing); any comp stat data they are using; privacy issues; human trafficking work; use of force stats; homelessness issues; towing cars of people who sleep in their vehicles	High	Ongoing as appropriate	1/23/2020	
15	Review Commission's Agenda Setting Policy	4/25/2019			High		1/23/2020	

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16	Recommendations for Increasing Communication Between CPRA and IAD	10/6/2018		Review of existing communication practices and information sharing protocols between departments, need recommendations from stakeholders about whether a policy is needed. Ensure prompt forwarding of complaints from IAD to CPRA and prompt data sharing.	High		2/13/2020	
17	Request City Attorney Reports	1/1/2018	Request the City Attorney submit semi-annual reports to the Commission and the City Council	<p>Oakland Municipal Code 2.45.070(I). Request the City Attorney submit semi-annual reports to the Commission and City Council which shall include a listing and summary of:</p> <ol style="list-style-type: none"> 1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration; 2. Arbitration decisions or other related results; 3. The ways in which it has supported the police discipline process; and 4. Significant recent developments in police discipline. <p>The City Attorney's semi-annual reports shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code 832.7</p>	High	Semi-annually	2/13/2020	Smith
18	Feedback from Youth on CPRA App	10/10/2018		Get some feedback from youth as to what ideas, concerns, questions they have about its usability.	High		2/27/2020	

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19	Confirming the Process to Hire Staff for the Office of Inspector General	5/17/2019	Per the Enabling Ordinance: The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst position and funding then budgeted to the Agency shall be reallocated to the OIG. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter.	This will require information presented from the City Administrator's Office.	High			
20	Desk Audit of CPRA Staff by Human Resources	5/17/2019	The Commission would like to request that Human Resources do a desk audit for every job position in the CPRA.	This will enable the Police Commission to engage in a reorganization of the CPRA.	High			John Alden
21	Hire Inspector General (IG)	1/14/2019	Hire IG once the job is officially posted	Pending Measure LL revisions to be included in the November 2020 ballot. Recruitment and job posting in process.	High			Personnel Committee

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22	Performance Reviews of CPRA Director and OPD Chief	1/1/2018	Conduct performance reviews of the Agency Director and the Chief	The Commission must determine the performance criteria for evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Agency Director's or the Chiefs job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.	High	Annually; Criteria for evaluation due 1 year prior to review		
23	Develop Plan for Quarterly Reports in Relation to Annual Report that is Due April 17th of Each Year	12/6/2019		The Commission is required to submit an annual report each year to the Mayor, City Council and the public per Ord. Section 2.45.220. Preparing quarterly reports will help with the coordination and preparation of an annual report.	High			
24	Proposal For Staff Positions for Commission and CPRA	1/1/2018	Provide the City Administrator with its proposal for staff positions needed for Commission and Agency to fulfill its functions and duties		High	Ongoing as appropriate		
25	OPD Update on New Karibbean City Night Club Issue	10/29/2019	OPD to provide an update on the status of an issue that was raised on 10.10.19	The owner of the night club spoke during Open Forum at the meeting on 10.10.19 about an issue with OPD.	Medium			
26	City Auditor's Office to Present Performance and Financial Audit of Commission		City Auditor to conduct a performance audit and a financial audit of the Commission and the Agency	No later than two (2) years after the City Council has confirmed the first set of Commissioners and alternates, the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency.	Medium		1/23/2020	

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27	Review Budget and Resources of IAD	10/10/2018		In Discipline Training it was noted that many "lower level" investigations are outsourced to direct supervisors and sergeants. Leaders in IAD have agreed that it would be helpful to double investigators and stop outsourcing to Supervisors/Sgts. Commissioners have also wondered about an increase civilian investigators. Does the Commission have jurisdiction over this?	Medium			
28	Community Policing Task Force/Summit	1/24/2019			Medium		1/23/2020	Dorado
29	Receive Report from Urban Strategies on their Safe Oakland Summit of 6.5.19	8/22/2019		Commissioner Dorado will invite David Harris of Urban Strategies to give a report on the Safe Oakland Summit which was held on 6.5.19	Medium		1/23/2020	Dorado
30	Report from OPD Regarding Found/Confiscated Items	7/12/2019	OPD Chief Kirkpatrick will report on the Department's policy for disposition of found/confiscated items.	This came about through a question from Nino Parker. The Chief offered to present a report at a future meeting.	Medium		1/23/2020	
31	Revise Contracts with CPRA and Commission Legal Counsels	10/10/2018		The contract posted on the Commission's website does not comport with the specifications of the Ordinance. As it stands, the Commission counsel reports directly to the City Attorney's Office, not the Commission. The Commission has yet to see the CPRA attorney's contract, but it, too, may be problematic.	Medium		1/23/2020	
32	OPD Supervision Policies	10/2/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for supervisory accountability. Draft policy changes as needed. In addition, IG should conduct study of supervisor discipline practices. In other words, how often are supervisors held accountable for the misconduct of their subordinates.	Medium		1/23/2020	

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33	Modify Code of Conduct from Public Ethics Commission for Police Commission	10/2/2018		On code of conduct for Commissioners there is currently a code that was developed by the Public Ethics Commission.	Medium		2/27/2020	
34	CPAB Report			Oakland Municipal Code §2.45.070 (O): Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.	Medium			
35	Follow up on Najiri Smith Case	10/10/2018		Community members representing Najiri claim the officer lied re. the time of interaction, which makes the citation (loud music after 10pm) invalid. They claimed he was engaged by OPD around 9:10pm.	Medium			
36	Offsite Meetings	1/1/2018	Meet in locations other than City Hall	The offsite meetings must include an agenda item titled "Community Roundtable" or something similar, and the Commission must consider inviting individuals and groups familiar with the issues involved in building and maintaining trust between the community and the Department. (OMC § 2.45.090(B).)	Medium	Annually; at least twice each year		Dorado, Harris, Jackson
37	Report Regarding OPD Chief's Report	1/1/2018	Submit a report to the Mayor, City Council and the public regarding the Chief's report in addition to other matters relevant to the functions and duties of the Commission	The Chief's report needs to be completed first.	Medium	Annually; once per year		
38	Review Commission's Code of Conduct Policy	4/25/2019			Medium		3/12/2020	Prather
39	Review Commission's Outreach Policy	4/25/2019			Medium		3/12/2020	Dorado

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40	Taser Policy (incorporate into Use of Force)	10/10/2018		This is part of Use of Force Policy; Review use of tasers in light of what happened to Marcellus Toney - In the report the Commission was given, it mentioned that officers have choice as to where to deploy a taser.	Medium			
41	Presentation by National Institute for Criminal Justice Reform (NICJR) of proposed pilot juvenile diversion program	11/18/2019	NICJR has requested time at a Commission meeting to present their proposed pilot juvenile diversion program	The program is the Neighborhood Opportunity and Accountability Board (NOAB) which will be a community based, restorative, youth diversion initiative in Oakland. The NOAB will divert youth from formal processing into the juvenile justice system, involve community members in what happens with youth who engage in delinquent behavior, improve youth outcomes, and increase public safety.	Low		1/9/2020	Harris
42	De-Escalation Policy (incorporate into Use of Force)	1/1/2018		This should be part of Use of Force Policy; review existing policy (if any) and take testimony/evidence from experts and community about best practices for de-escalation.	Low			
43	Annual Report	1/1/2018	Submit an annual report each year to the Mayor, City Council and the public		Low	4/17/2020	1/23/2020	Prather, Smith
44	Discipline: Based on Review of MOU	10/6/2018		How often is Civil Service used v. arbitration? How long does each process take? What are the contributing factors for the length of the process? How often are timelines not met at every level? How often is conflict resolution process used? How long is it taking to get through it? Is there a permanent arbitration list? What is contemplated if there's no permanent list? How often are settlement discussions held at step 5? How many cases settle? Is there a panel for Immediate dispute resolution? How many Caloca appeals? How many are granted? What happened to the recommendations in the Second Swanson report?	Low		1/23/2020	

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45	Outreach Committee: Work with Mayor's Office and City Admin to Publicize CPRA App	10/10/2018			Low		2/27/2020	
46	Public Hearings on OPD Policies, Rules, Practices, Customs, General Orders	1/1/2018	Conduct public hearings on Department policies, rules, practices, customs, and General Orders; CPRA suggests reviewing Body Camera Policy		Low	Annually; at least once per year	2/27/2020	Dorado
47	Revisit Standing and Ad Hoc Committee Assignments	10/29/2019			Low		2/27/2020	
48	Public Hearing on OPD Budget	1/1/2018	Conduct at least one public hearing on the Police Department's budget	Tentative release date of Mayor's proposed budget is May 1st of each year.	Low	Spring, 2021	Fall, 2019	
49	Amendment of DGO C-1 (Grooming & Appearance Policy)	10/10/2018		DGO C-1 is an OPD policy that outlines standards for personal appearance. This policy should be amended to use more inclusive language, and to avoid promoting appearance requirements that are merely aesthetic concerns, rather than defensible business needs of the police department.	Low			
50	Assessing Responsiveness Capabilities	10/6/2018		Review OPD policies or training regarding how to assess if an individual whom police encounter may have a disability that impairs the ability to respond to their commands.	Low			
51	Creation of Form Regarding Inspector General's Job Performance	1/1/2018	Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially.	To be done once Inspector General position is filled.	Low			

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52	OPD Data and Reporting			Oakland Municipal Code §2.45.070(P): Review and comment on the Department's police and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.	Low			
53	Overtime Usage by OPD - Cost and Impact on Personal Health; Moonlighting for AC Transit	1/1/2018		Request Office of Inspector General conduct study of overtime usage and "moonlighting" practices.	Low			
54	Process to Review Allegations of Misconduct by a Commissioner	10/2/2018		Maureen Benson named concerns/allegations about a sitting Commissioner early in 2018, but no process exists which allows for transparency or a way to have those concerns reviewed. It was suggested to hold a hearing where anyone making allegations presents evidence, the person named has an opportunity to respond and then the commission decides if there's sanctions or not. *Suggestion from Regina Jackson: we should design a form...check box for the allegation...provide narrative to explain..hearing within 4 weeks?	Low			Jackson

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55	Proposed Budget re: OPD Training and Education for Sworn Employees on Management of Job-Related Stress	1/1/2018	Prepare for submission to the Mayor a proposed budget regarding training and education for Department sworn employees regarding management of job-related stress. (See Trauma Informed Policing Plan)	Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of posttraumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.	Low	4/15/2020		