

**ATTACHMENT A
PROFESSIONAL SERVICES
AGREEMENT**

PLEASE NOTE:

As you review the following agreement, please consider the following “**Instructions to Respondents Regarding the City’s Proposed Contract**”

Exceptions to or waivers of the terms and conditions are not encouraged. However, if respondents believe them necessary, the following procedure must be followed in all such circumstances. Failure to comply with these procedures will disqualify the submission.

Generally

A. All exceptions to or waivers of the terms and conditions taken must be accompanied by a separate request, in writing, setting forth the grounds for the requested exception or waiver.

B. The written requests must accompany the proposal and are subject to the rules for timely responses of proposals.

C. The City reserves the right to reject responses based upon a Respondent’s exceptions to or requested waiver of the City’s terms and conditions.

Respondents’ attention is specifically directed to the following:

1. Contract Terms and Conditions

a. Performance Bond

The City of Oakland City Council requires a Performance Bond for all City contracts to establish a source of revenue for completing the project in question should a vendor become insolvent. The City Administrator has the discretion to waive this requirement pursuant to a vendor’s request for such waiver, in writing, which establishes to the City Administrator’s satisfaction, that the vendor is sufficiently solvent such that the Bond is not needed. The City Administrator’s decision as to whether or not to waive the Bond requirement is final.

b. Liquidated Damages for Contractor’s Unexcused Untimely Performance

Where time is of the essence in the performance of the contract, Liquidated Damages are required to incent the vendor’s timely performance. Liquidated Damages are assessed only for the vendor’s unexcused delays in meeting the agreed upon progress objectives for the contract. Exceptions to this provision are rarely granted and must be based upon an alternative that, in the City’s sole discretion, incents and assures the timely performance of the contract.

Exceptions not granted will disqualify the proposal from further consideration.

2. Contract Compliance Provisions

The City's Contract Compliance provisions have been established by the Contract Compliance Department. All exceptions taken to those provisions will require a written request to grant the exception and should be submitted to:

Deborah Lusk-Barnes
Director, Contracts & Compliance, Office of the City Administrator
250 Frank Ogawa Plaza, Suite 3341
Oakland, Ca. 94612
(510) 238-6270 dbarnes@oaklandnet.com

The request for each exception taken must accompany the Respondent's submittal and must clearly set forth why the exception should be granted. Contract Compliance will review each requested exception and has the sole discretion to grant it or not. Exceptions not granted will disqualify the proposal from further consideration.

3. City Schedules

The City's Schedules have been established pursuant to City Council action, are mandatory and must be completed without modification and submitted with your proposal. Failure to do so will disqualify the proposal from further consideration.

ATTACHMENT A (Continued)
PROFESSIONAL SERVICES
AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND _____

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**AGREEMENT TO PROVIDE
PROFESSIONAL SERVICES AND RELATED PRODUCTS
BETWEEN THE CITY OF OAKLAND
AND _____**

This Agreement to provide Professional Services and Related Products as applicable and as set forth with specificity herein [“Agreement”] is entered into as of the date when fully executed below between _____, a _____ corporation (“Contractor”) and the City of Oakland (“City”), a municipal corporation, One Frank H. Ogawa Plaza, Oakland, California 94612, who agree as follows:

RECITALS

This Agreement is made with reference to the following facts and objectives:

- A. **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; and
- B. **WHEREAS**, Contractor is the developer or distributor of software products, hardware and provides related professional services [“Services”]; and
- C. **WHEREAS**, City is part of and provides information technology services to the various City departments, offices, and programs; and
- D. **WHEREAS**, City wishes to acquire Contractor’s Services as specifically set forth in this Agreement, including the Statement of Work [“SOW”] attached hereto and
- E. **WHEREAS**, the following Exhibits and Schedules are attached to and incorporated by reference into this Agreement:

- Exhibit 1 Statement of Work**
- Exhibit 2 Bill of Materials**
- Exhibit 3 Maintenance Agreement**
- Exhibit 4 Performance Bond**
- Exhibit 5 Contractor’s RFP Proposal and Project Proposal Presentation**
- Exhibit 6 Contract Compliance Provisions**
- Exhibit 7 City Schedules**

NOW THEREFORE, THE PARTIES TO THIS Agreement COVENANT AND AGREE AS FOLLOWS:

1. Definition

a. **“Acceptance”** as used herein shall mean the acceptance of Services by City in writing in accordance as provided in Section [INSERT] and Section [INSERT] of Exhibit 1, the Statement of Work [“SOW”] confirming that the Services and Deliverables comply in all material respects with the Specifications.

b. **“Acceptance Certificate”** as used herein shall mean the document substantially in the form of Attachment 1 to the SOW which City shall issue to Contractor when Contractor satisfactorily completes the Testing and Acceptance provisions for Contractor’s Deliverables or Services; an Acceptance Certificate must accompany each invoice Contractor submits to City;

c. **“Payment”** as used herein shall mean City’s payment to Contractor for Deliverables or Services pursuant to an invoice accompanied by an Acceptance Certificate indicating City has accepted the invoiced Deliverables or Services as provided in Section [INSERT] and Exhibit 1; “

e. **OTHERS AS THE PARTIES DEEM APPROPRIATE, E.G. DELIVERABLES, SERVICES, SPECIFICATIONS, REQUIREMENTS, TECHNICAL TERMS;**

2. Priority of Documents

In the event of conflicting provisions as between the following documents, except as otherwise expressly stated, the provisions shall govern in the following order: the Amendments to this Agreement, Change Notices (as defined in Section 12 of this Agreement) in reverse chronological order of adoption, this Agreement and its Exhibits. The Exhibits shall govern in numerical order as set out in this Agreement.

3. Conditions Precedent

a Contractor must provide City with the following before the Agreement will become effective:

(1). A copy of Contractor’s City of Oakland Business Tax License which must be kept current for the duration of the Agreement and shall be attached to this Agreement as part of Exhibit 5;

(2). A completed set of the City of Oakland Schedules which shall be attached to this Agreement as Exhibit 5;

(3) A copy of Contractor’s Performance Bond which shall be attached to this Agreement as Exhibit 4 and incorporated herein by this reference.

- b. Contractor and City must complete and agree upon and execute a Statement of Work before the Agreement will become effective and which shall be attached to this Agreement and incorporated herein by this reference.

4. Statement of Work

Contractor agrees to perform the services (“**Services**”) and provide the deliverables (“**Deliverables**”) specified in **EXHIBIT 1** the Statement of Work, which is attached to this Agreement and incorporated herein by this reference.

5. Initial Term

The Initial Term of this Agreement shall start when it is executed in full by all Parties and end upon the satisfactory completion of all tasks set forth in the SOW, and the provision of all Services called for hereunder, unless extended by the written Agreement of the Parties or sooner terminated as provided herein.

6. City Requirements for Project Deliverables

- a. As is set forth with specificity in the Statement of Work [Exhibit 1], this Project will require Contractor to provide the Services necessary to complete the Design-Build-Maintain Technology Linkage System (TLS) including, but not limited to the integration, enhancement, development, configuration, and maintenance of the specified systems (existing and new) relative to the project and the Work.
- b. This Project is part of the [DESCRIBE PROJECT]demands to develop and deploy a comprehensive technology [system/interface/ect.] that integrates key City of Oakland, and third party stakeholder systems that require the automation of primary ____ [DESCRIBE ESSENCE/PURPOSE OF PROJECT]_____ which are essential to enhanced _____
- c. Contractor will be responsible for the entire Scope as set forth in Exhibit 1, the SOW, including, but not limited to being solely responsible for coordinating the activities of all team members, and ensuring that the Scope is fulfilled to the City’s satisfaction in accordance with this Agreement.
- d. Contractor must provide a turnkey solution for the Project at a firm, fixed price which shall, in no event, exceed [INSERT].

7. Contractor Warranty and Indemnification of Services

- a. In recognition of City’s reliance on its Services and the Special Circumstances of this Project, Contractor warrants that its Services will be suitable for the purpose intended and fully meet City’s Requirements. Subject to Section [INSERT] [Limitation on Liability], Contractor agrees to fully indemnify City for all liabilities, claims, losses, damages and expenses, including without limitation, reasonable attorney’s fees, arising from any failure by Contractor in the performance of the Services as required hereunder.

b. Contractor acknowledges that City is a provider of public and municipal services to the public and residents of the City of Oakland and that City's reliance on and use of Contractor's Deliverables will be vital to: (a) the business operations of the City; (b) the orderly and efficient provision of public and municipal services by the City; and (c) the health and safety of City's residents; and therefore, that any unauthorized interruption of City's business and operations could result in substantial liability to City. In recognition of City's status as a provider of such public and municipal services, Contractor warrants and represents that Contractor shall not at any time during the term of this Agreement and thereafter render the Software unusable or inoperable, take possession of the Deliverables provided to City by Contractor or Contractor's subcontractors or in any way deliberately take actions limiting Contractor's liability under this Agreement. If Contractor takes any such actions, Contractor shall be liable for and indemnify City for all liabilities, claims, losses, damages and expenses, including without limitation, reasonable attorney's fees, arising from Contractor's actions the Services and Deliverables (a) will be free from defects in design, workmanship and materials, delivered to City hereunder; (b) will conform in all material respects to the Specifications

c. Contractor represents that it will use all reasonable efforts, including appropriate testing, to ensure that the Software does not contain viruses, contaminants, or other harmful code that may harm the Software, City systems or other City software.

d. Contractor represents that it owns or has the unencumbered right to license and/or assign to City, as provided in this Agreement, the Deliverables and all results of Services delivered to City hereunder, including all required Intellectual Property Rights therein

e. Contractor represents that it has the requisite experience, certifications, skills and qualifications necessary to perform the Services in: (i) a timely, competent, and professional manner, and (ii) accordance with applicable governmental requirements, statutes, regulations, rules and ordinances including, without limitation, applicable data privacy laws and regulations ("Law");

f. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, THE CONTRACTOR MAKES NO REPRESENTATION, ACKNOWLEDGEMENT, CONDITION OR WARRANTY OF ANY KIND WHATSOEVER UNDER THIS AGREEMENT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY STATUTORY, EXPRESS, IMPLIED OR OTHER WARRANTIES OR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE REGARDING ANY SERVICES, DELIVERABLE OR ANY OTHER PRODUCT DELIVERED TO THE CITY UNDER THIS AGREEMENT.

8. **Payments.**

a. Upon performance of the Services (as defined in Section 4 and 6 of this Agreement and in the Statement of Work) and the completion of each Deliverable (as defined in Section 8 of this Agreement and in the Statement of Work) which City

has previously Authorized (as defined in Section 3 and 8 (b) and (c) of this Agreement), and City's Acceptance (as defined in Section 8(c) of this Agreement) of that Deliverable, Contractor will invoice City for the Services and Deliverable. The invoice must be accompanied by an Acceptance Certificate (as defined in Section 9.3(b) of this Agreement) for the Services or Deliverable being invoiced. City will pay Contractor's invoice within thirty (30) days of City's receipt of Contractor's invoice. All such payments from the City shall be in immediately available funds and in U.S. dollars. Any amounts invoiced for Deliverables for which City has provided its Acceptance which City has not paid within 30 days of City's receipt of Contractor's invoice shall accrue interest at the rate of six percent (6%) per annum until paid in full.

b. For the purposes of this Agreement:

- (i) "Authorized" shall mean that the City has reviewed the proposed project plan ["Project Plan"] with Contractor during the bi-weekly meetings between the Parties as set out in the Statement of Work attached to this Agreement as Exhibit 1 ("SOW") and has provided written approval to Contractor to continue providing the Services and Deliverables contemplated under the Project Plan.
- (ii) "Acceptance" or "Accepted" shall mean that the City has reviewed the Authorized Services or Deliverables upon Contractor's completion of same and accepted them, in writing, in accordance with Section 9 of this Agreement and as provided in the SOW.

c. Contractor acknowledges and agrees that City shall have no obligation whatsoever to pay Contractor for any Services or Deliverables performed which have not been Authorized by the City as contemplated herein. Contractor further acknowledges and agrees that City shall have no obligation whatsoever to pay Contractor for any Services or Deliverables it has not Accepted as provided herein (Acceptance, Section 9).

9. Acceptance

9.1 Unless otherwise agreed in writing, the Parties agree that:

(a) When Contractor completes each Authorized Deliverable ("Deliverable"), the City shall have five (5) Business Days, or such longer period of time as the Parties may agree upon or as is set out in the SOW (the "Acceptance Period"), from the City's receipt of the Deliverable to review and either provide its Acceptance of the Deliverable and an Acceptance Certificate or written notice of its rejection setting out in detail the reasons why such Deliverable failed to be Accepted in accordance with Section 9.2 of this Agreement;

(b) For each Deliverable, when corrective action is required by the City's written notice of deficiencies, Contractor shall have five (5) Business Days, or such longer

period of time as the Parties may agree upon, to correct the deficiencies City has identified as provided herein [“Corrective Action Period”];

- (c) For each Deliverable, Contractor shall be given at least two opportunities to correct the deficiencies identified by the City, unless the Parties otherwise mutually agree;
- (d) Contractor shall correct any deficient Deliverables for which the City has delivered written notice to Contractor as set out in subsection 9.1(b) above such that the Deliverable complies with the requirements set out under this Agreement,
- (e) If Contractor fails to remedy a deficient Deliverable after both opportunities to remedy as set out in subsection 9.1(d) above, then such failures shall constitute a material default of this Agreement; and
- (f) Changes to Deliverables for which the City has provided Acceptance will be handled through the Change Notice process set out at Section 12 of this Agreement and Contractor will start no work on any change until the Parties have approved and executed any applicable Change Notice.

9.2 Upon delivery by Contractor of any Deliverable and within the Acceptance Period, the City shall review such Deliverable to determine if such Deliverable meets the applicable Acceptance Criteria as set out in the SOW, and

- (a) if such Deliverable meets the applicable Acceptance Criteria or is otherwise, used or acted upon by the City, the Deliverable will be deemed Accepted on such date unless City has given notice to Contractor that it needs to use or act upon the Deliverable in order to determine whether or not it is acceptable,
- (b) if such Deliverable does not meet the applicable Acceptance Criteria, the City will provide written notice by no later than the end of the Acceptance Period to Contractor setting out reasonable particulars of any deficiency and Contractor will, within the Corrective Action Period, re-work the Deliverable to meet the applicable Acceptance Criteria, or
- (c) if the City fails to provide written notice rejecting the Deliverable, or fails to respond to Contractor in writing by the end of the Acceptance Period, then the City will be deemed to have Accepted such Deliverable.
- (d) Once the City Accepts a Deliverable under the terms of this Section 9, including its subparts, City will issue Contractor an Acceptance Certificate which must accompany Contractor’s invoice to City for that Deliverable.

9.3 For the purposes of this Agreement:

- a. “Acceptance Criteria” means reasonable and objective criteria jointly established and agreed to in writing by the City and Contractor describing the criteria for the completion and acceptability of Deliverables all as more particularly set out in the SOW;

b. “Acceptance Certificate” means a certificate authorized and signed by the City indicating that the City has Accepted the specific Deliverable or Service to which the Acceptance Certificate relates,

10. Proprietary or Confidential Information of the City

10.1 Confidentiality Obligations. Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other Party pursuant to this Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of this Agreement, and all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing Party to the receiving Party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of either Party.

10.2 Each Party agrees to keep confidential and not disclose to any third party and to use only for purposes of performing or as otherwise permitted under this Agreement, any Confidential Information. The receiving Party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each Party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

10.3 Exceptions.

- a. The obligations of this Section 10.3 shall not apply if receiving Party can prove by appropriate documentation, where appropriate, that such Confidential Information (i) was known to the receiving Party as shown by the receiving Party’s files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving Party subsequent to the time of the disclosure thereof, (iv) is or was independently developed by the Contractor without access to or use of the Confidential Information; (v) was provided to the Contractor by a third party who, to the best of the Contractor’s knowledge, was not bound by any confidentiality obligation related to such Confidential Information; or (vi) is required by law or government order to be disclosed by the receiving Party, provided that the receiving Party shall (i) notify the disclosing Party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its

expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

10.4 Contractor acknowledges that City is subject to public disclosure laws and that City will comply with requests for information ("RFI"), as it is required to do under the federal Freedom of Information Act, California Public Records Act, City of Oakland Sunshine Act or judicial or administrative court order. Contractor acknowledges that an RFI may pertain to any and all documentation associated with City's use of Contractor's Services. Contractor further acknowledges that it is obligated to assist and cooperate with City by producing all documentation that is responsive to the RFI so that City may comply with its statutory obligations. City agrees to give Contractor as timely written notice as possible of the RFI such that Contractor may oppose the RFI or exercise such other rights at law as Contractor believes it has. However, Contractor must produce all RFI responsive documents to City and City will comply with the RFI unless, within the time frame established by the statute, judicial or court order under which the RFI is made, Contractor procures a Temporary Restraining Order or similar injunctive relief from a court or other tribunal of competent jurisdiction ordering City not to comply with the RFI pending final determination of Contractor protest of the RFI. Contractor further agrees to accept City's tender of defense and to defend City and pay all City costs of defense in any litigation brought against City with respect to City not complying with an RFI that Contractor protests and will hold City harmless against any claims, attorneys' fees, damages, fines, judgments, or administrative penalties, which may arise from any such actions.

11. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents in drawings, plans, sheets prepared by Contractor or its Subcontractors 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.

12. Change Notices

- (a) Upon fifteen (15) days' written notice to Contractor, City shall have the right to request changes in the provision of any future Deliverables under this Agreement by delivering to Contractor a change notice ("Change Notice"), provided that any and all such changes shall be subject to Contractor's written consent. Each Change Notice may specify changes to the Software Contractor is to provide hereunder and the manner in which Contractor is to provide the Software, If any Change Notice causes an increase or decrease in the price or the time required for performance under this Agreement, an equitable adjustment jointly agreed upon by City and Contractor shall be made and the Agreement shall be modified in writing accordingly.
- (b) Change Notices issued under this Agreement must be accepted or rejected in writing by Contractor within ten (10) days of Contractor's receipt of its issuance. Notwithstanding as may be otherwise provided here in, if for any

reason Contractor should fail to timely accept or reject a Change Notice in writing, such Change Notice shall be deemed accepted.

13. Liquidated Damages for Contractor's Unexcused, Untimely Performance

Contractor's failure to complete the Work within the time allowed will result in the City sustaining damages and the assessment by City of Liquidated Damages.

(a) Excusable Delays (Force Majeure)

If Contractor or City experiences an Excusable Delay Event, Contractor or City shall, within ten (10) days after first becoming aware of each such event, give written notice of the delay to the other party and describe any impact the "Excusable Delay" may have upon the Schedule. If the foregoing Notice(s) are issued, or in the absence thereof from the City, then Contractor shall be entitled to a day for day extension to the Schedule corresponding to the number of days of delay directly caused by the Excusable Delay Event.

(b) Schedule of Liquidated Damages.

City and Contractor recognize that time is of the essence in the performance of this Agreement and that City will suffer financial loss in the form of contract administration expenses (including project management and consultancy expenses), delay and loss of public use, if Contractor does not complete its Services and the Deliverables associated therewith within the respective times specified in this Agreement and in the SOW, plus any extensions that are allowed in accordance with this Agreement. Contractor and City agree that because of the nature of the Services as provided by this Agreement, it would be impractical or extremely difficult to fix the amount of actual damages incurred by City because of the delay in completion or timely delivery of the Services. Accordingly, City and Contractor agree that Contractor shall pay City the following liquidated damages measures:

(i) Deliverables: \$500.00 for each calendar day that expires after the time specified in the Scope of Work for Contractor to provide and for City to accept the Deliverables specified in the SOW.

(ii) Milestones: \$1,000.00 for each calendar day that expires after the time specified in this Agreement for Contractor to complete the Milestone set forth in this Agreement and to complete all of the Services, excluding all "inexcusable delay" events

14. Limitation on Liability

(a) Either party's liability to the other party for any and all liabilities, claims or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the aggregate, exceed \$4Million or the total value of this Agreement, whichever is greater.

(b) In no event shall either party be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

(c) This limitation of liability shall not apply to all actions, demands, or claims by any third party for death, bodily injury, damage to tangible property in connection with or arising under this Agreement, nor to any intentional misconduct, recklessness, or gross negligence or to Contractor's Confidentiality (Section 10) and indemnification (Section 16) obligations as set forth in this Agreement.

15. Performance Bond

Prior to this Agreement being effective and binding on the City, Contractor shall file with City Clerk and with the City representative to whom Notices should be sent as is specified below in Section [INSERT] ("Notices") a Corporate surety bond, in the form of a Performance Bond, in the penal sum of 100% of the total contract amount of this Agreement to guarantee both faithful performance of Contractor's Services and a source of revenue for the City to complete the Services under this Agreement should Contractor default or become insolvent. City's representative shall attach a copy of the Bond to this Agreement as Exhibit 4. Contractor must keep the Performance Bond current for the duration of this Project.

16. Indemnification

(a) General Indemnification. 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 (of every kind, nature and description), claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, damages, (incidental or consequential) costs, actions or causes of action, and expenses, including reasonable attorneys' fees, (collectively referred to herein as "Actions") 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 10 above.
- (b) Proprietary Rights Indemnity. Contractor shall indemnify, defend, save and hold harmless Indemnitees from any and all Actions arising out of claims that the Software, infringes upon or violates the Intellectual Property Rights of others. If the Software will become the subject of an Action or claim of infringement or violation of the Intellectual Property Rights of a third party, City, at its option shall require Contractor, at Contractor's sole expense to: (1) procure for City the right to continue using the Software; or (2) replace or modify the Software so that no infringement or other violation of Intellectual Property Rights occurs, if City determines that: (A) such replaced or modified Software will operate in all material respects in conformity with the then-current specifications for the Software; and (B) City's use of the Software is not impaired thereby. Contractor's obligations under this Agreement will continue uninterrupted with respect to the replaced or modified Software as if it were the original Software.
- (c) For the purposes of the indemnification obligations set forth herein, the term "Contractor" includes, without limitation, Contractor, its officers, directors, employees, representatives, agents, servants, sub consultants, and subcontractors.
- (d) Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any Action which potentially falls within this indemnification provision, which obligation shall arise at the time an Action 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 arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- (e) City shall give Contractor prompt written notice of any Action and shall fully cooperate with Contractor in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests. 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 payments due Contractor in the amount of reasonable defense costs actually incurred. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.

- (f) All of Contractor's indemnification obligations hereunder 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) Contractor's indemnification obligations hereunder shall not be limited by the City's insurance requirements contained in Schedule B hereof, or by any other provision of this Agreement.

17. Termination

- (a) Termination for Breach. If Contractor breaches any material obligation under this Agreement and fails to cure the breach within 30 days of receipt of written notice from City of said breach, City may terminate the Agreement and, at its option: (i) subject to the Limitation on Liability (Section 14), recover all direct damages it incurs as a result of Contractor's breach; (ii) require that Contractor repay City all monies City has paid Contractor under this Agreement or (iii) retain the portion of Contractor's Deliverables that the City has accepted and paid Contractor for and complete performance of the Agreement with another vendor. In the event City elects to complete performance of the Agreement with another vendor, Contractor shall remain liable for any increase in costs to City of completing the Agreement in excess of the price City would have paid Contractor for completing the Agreement.
- (b) Contractor may terminate this Agreement if City breaches a material provision of the Agreement and does not cure the breach within 30 days of written notice from Contractor of said breach. In such event, Contractor will be entitled to payment for Deliverables which City has accepted in accordance with the Testing and Acceptance provisions of this Agreement.
- (c) Bankruptcy. Either party may immediately terminate this Agreement if (i) the other party files a petition for bankruptcy or has filed against it an involuntary petition for bankruptcy which is not dismissed within 60 days of its filing, (ii) a court has appointed a receiver, trustee, liquidator or custodian of it or of all or a substantial part of the other party's property, (iii) the other party becomes unable, or admits in writing its inability, to pay its debts generally as they mature, or (iv) the other party makes a general assignment for the benefit of its or any of its creditors.
- (d) Termination for Convenience by City. City may terminate this Agreement for any reason at any time upon not less than sixty (60) days' prior written notice to Contractor. After the date of such termination notice, Contractor shall not perform any further services or incur any further costs claimed to be reimbursable under this Agreement, any Purchase Order, Change Order, or Change Notice without the express prior written approval of City. As of the date of termination, City shall pay to Contractor all undisputed amounts then due and payable under this Agreement.

- (e) Transition Services after termination. In connection with the expiration or other termination of this Agreement or the expiration of this Agreement, Contractor may provide transition services as requested by City. Such transition services shall be subject to the pricing provided in this Agreement or any amendment thereto.

18. Dispute Resolution

a. If dispute or disagreement among the Parties arises with respect to either Party's performance of its obligations hereunder, or any provision of or interpretation of the Agreement, the Parties agree in good faith to attempt to resolve such dispute or disagreement (a "Dispute") prior to submitting the Dispute to mediation, arbitration or litigation in accordance with this Section 18. Such resolution efforts shall involve the City Administrator of the City of Oakland and an executive officer of Contractor, together with such other persons as may be designated by either Party.

b. Any Party may commence said resolution efforts by giving notice, in writing, to any other Party. Such notice shall include at least a description of the Dispute and any remedial action that the Party commencing the resolution procedure asserts would resolve the Dispute. Upon receiving such notice, the Party against whom the Dispute is brought shall respond in writing within five (5) Business Days. The Parties shall then meet and confer in a good faith attempt to resolve the Dispute.

c. If the Dispute has not been resolved within five (5) Business Days after the Subsection 18.b. notice is given, and unless the Party initiating the Dispute does not wish to pursue its rights relating to such Dispute or desires to continue the Pre-Mediation Dispute Resolution, then such Dispute will be automatically submitted to mediation. The mediation will be conducted in Alameda County by a single mediator selected by the Parties to the Dispute by mutual agreement or by the use of the Commercial Arbitration Rules of the American Arbitration Association for selecting an Arbitrator ["AAA RULES"] The Parties to the Dispute shall evenly share the fees and costs of the mediator. The mediator shall have twenty (20) Business Days from the submission to mediation to attempt to resolve such Dispute. If the Dispute is not resolved within that time period, the parties will be entitled to pursue such matter by demanding arbitration under the AAA RULES or instituting litigation.

19. 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 of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, 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.

20. Bankruptcy

All rights and licenses granted to City pursuant to this Agreement are, and shall be deemed to be, for purposes of Section 265(n) of the U.S. Bankruptcy Code, licenses of rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. In a bankruptcy or insolvency proceeding involving Contractor, the parties agree that City, as licensee of such rights, shall retain and fully exercise all of its rights and elections under the U.S. Bankruptcy Code, and the provisions thereof shall apply notwithstanding conflict of law principles. The parties further agree that, in the event of the commencement of a bankruptcy or insolvency proceeding by or against Contractor under the U.S. Bankruptcy Code, City shall be entitled to a complete duplicate of any such intellectual property, including the source code for Contractor’s Licensed Software which Contractor has placed in escrow as required under this Agreement and all embodiments of such intellectual property, to which City would otherwise be entitled under this Agreement, and the same, if not already in City’s possession, shall be promptly delivered to City (a) upon any such commencement of a bankruptcy proceeding upon written request therefore by City, unless Contractor elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, upon rejection of this Agreement by or on behalf of Contractor upon written request therefore by City. If, in a bankruptcy or insolvency proceeding involving Contractor, the provisions of the U.S. Bankruptcy Code referenced above are determined not to apply, City shall nevertheless be entitled to no less than the protection offered by the provisions of the U.S. Bankruptcy Code with respect to its entitlement to and rights to the use and possession of all intellectual property to which City has been granted rights under this Agreement notwithstanding the bankruptcy or insolvency of Contractor.

21. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer. In the event that Contractor assigns this Agreement in compliance with this provision, this Agreement and all of its provisions shall inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.

22. 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.

23. 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 make reference to the contribution of the City of Oakland in making the project possible. The words “City of Oakland” will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of 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.

24. Conflict of Interest

(a) Contractor

The following protections against conflict of interest will be upheld:

- (1) 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 there from.
- (2) 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.

- (3) 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.
- (4) 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.
- (5) Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter 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 totaled more than \$500 in the previous 12 months, or value of the gift totaled more than \$350 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.).
- (6) Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "City officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing

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

- (7) 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.

25. Validity of Contracts

The Oakland City Council must approve all Agreements greater than \$15,000. This Agreement shall not be binding or of any force or effect until signed by the City Manager or his or her designee and approved as to form and legality by the City Attorney or his or her designee.

26. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its conflicts of laws principles. Any action or proceeding to enforce the terms of this Agreement shall be brought in the courts of Alameda County, Oakland, California and each party agrees to waive any objections to personal jurisdiction and venue in the courts of Alameda County, Oakland, California.

27. Headings

Headings and captions used to introduce Sections and paragraphs of this Agreement are for convenience, only, and have no legal significance.

28. Construction

- (a) Except as provided in Section 12 (b) above, acceptance or acquiescence in a prior course of dealing or a course of performance rendered under this Agreement or under any Change Order, or Change Notice, shall not be relevant in determining the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- (b) The language in all parts of this Agreement and any Purchase Order, Change Order, or Change Notice, shall in all cases be construed in whole, according to its fair meaning, and not strictly for or against, either Contractor, City regardless of the drafter of such part.

28. Waiver

No covenant, term, or condition of this Agreement may be waived except by written consent of the party against whom the waiver is claimed and the waiver of any term, covenant or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition of this Agreement.

30. 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 acknowledges and agrees that all of Contractor's employees and subcontractors are under the sole direction and control of Contractor and City shall have no authority over or responsibility for such employees and subcontractors of Contractor. Contractor has and shall retain the right to exercise sole direction 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 **EXHIBIT 1**

(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. 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. Contractor shall complete and submit to City, Schedule M-Independent Contractor Questionnaire, prior to the execution of this Agreement.

(c) Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result 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, except those tools, materials, equipment specified herein, if any, 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.

31. Attorneys' Fees

If either party commences an action or proceeding to determine or enforce its rights hereunder, the prevailing party shall be entitled to recover from the losing party all expenses reasonably incurred, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

32. Counterparts

This Agreement may be executed in any number of identical counterparts, any set of which signed by both parties shall be deemed to constitute a complete, executed original for all purposes.

33. Remedies Cumulative

The rights and remedies of City provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law, including the California Uniform Commercial Code.

34. Severability/Partial Invalidity

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

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

35. Access

Access to City's premises by Contractor shall be subject to the reasonable security and operational requirements of City. To the extent that Contractor's obligations under this Agreement or any Purchase Order, Change Order, or Change Notice, require the performance of Services or Work by Contractor on City's property or property under City's control, Contractor agrees:

- (i) to accept full responsibility for performing all Services or work in a safe manner so as not to jeopardize the safety of City's personnel, property, or members of the general public; and
- (ii) to comply with and enforce all of City's regulations, policies, and procedures including, without limitation, those with respect to security, access, safety and fire protection, City's policy against sexual harassment,

and all applicable state and municipal safety regulations, building codes or ordinances.

36. Entire Agreement of the Parties

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

37. Modification

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

38. Notices

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

(City of Oakland) _____

cc: (name) _____
Deputy City Attorney
1 Frank Ogawa Plaza, 6th Fl.
Oakland, CA 94612

(Contractor) _____

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.

39. Right to Offset

All claims for money or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of this Agreement or any Purchase Order, Change Order, or Change Notice or any other transaction with Contractor. To the extent that there are amounts due to the City and to a state or federal funding agency, and the amount of the offset is insufficient to pay such amount in full, the amount of the offset shall be prorated between the City and such state or federal funding agency in proportion to the amounts due them.

40. No Third Party Beneficiary

This Agreement shall not be construed to be an agreement for the benefit of any third Party or parties, and no third party or parties shall have any claim or right of action under this Agreement

41. Survival

Sections (2, 7, 8, 9, 10, 14, 15, 17, 26 and 40) of this Agreement, along with any other provisions which by their terms survive, shall survive the expiration or termination of this Agreement.

42. Time is of the Essence

The Special Circumstances of this Agreement require Contractor's timely performance of its obligations under this Agreement. Therefore, time is of the essence in the performance of this Agreement.

43. Authority

Each individual executing this Agreement or any Purchase Order, Change Order or Change Notice, hereby represents and warrants that he or she has the full power and authority to execute this Agreement or such Purchase Order, Change Order or Change Notice, on behalf of the named party such individual purports to bind.

SO AGREED:

City of Oakland,
a municipal corporation

Contractor

(City Administrator's Office) (Date)

(Signature) (Date)

(Department Head Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Resolution Number

(City Attorney's Office Signature) (Date)

ATTACHMENT B

Schedule Q

INSURANCE REQUIREMENTS

(Revised 09/12/2019)

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 on an occurrence basis and 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. **Workers' 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/RMD**, appropriate to the contractor's profession with limits not less than \$_____ each claim and \$_____ aggregate. If the professional liability/errors and omissions insurance is written on a claims-made form:
- a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.
- v. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than \$500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of \$500,000 per occurrence and in the aggregate.
- vi. **Sexual/Abuse insurance.** If Contractor will have contact with persons under the age of 18 years, or provides services to persons with Alzheimer's or Dementia, or provides Case Management services, or provides Housing services to vulnerable groups (i.e., homeless persons) Contractor shall maintain sexual/molestation/abuse insurance with a limit of not less than \$1,000,000 each occurrence and \$1,000,000 in the aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
- vii. **Technology Professional Liability (Errors and Omissions) OR Cyber Liability Insurance, if determined to be required by HRM/RMD**, *appropriate to the Consultant's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction*

of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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 insureds 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 insureds 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 project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

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

i. Evaluation of Adequacy of Coverage

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

J. Higher Limits of Insurance

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

END OF SCHEDULE Q – INSURANCE REQUIREMENT