

## APPENDIX E: COMPLIANCE WITH CITY COUNCIL POLICIES

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) 50% 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) *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.
  - c) 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.
  - d) 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.
  - e) Additional Preference Points for Request for Proposals (RFP) and Request for Qualifications (RFQ) may be earned for having an Oakland resident workforce. **Prime consultants seeking additional preference points for having an Oakland resident workforce must submit a completed Schedule E-2 titled the “Oakland Workforce Verification Form” no more than 4 days after the proposal due date. A copy of Schedule E-2 is found on: <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.**
  - f) 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

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earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.

- g) The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a copy of the final progress payment application.
- h) 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.
- i) 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.
- j) 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.
- k) 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.
- l) 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

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community.

4. Certification: **All potential proposers are encouraged to apply for certification as a not-for-profit L/SLBE. Please consider applying before the proposal due date.**

The City of Oakland issues certificates to firms meeting the minimum requirements for operating a business with a substantial presence in the Oakland geographic region.

- a) Certification Categories for profit and not-for profit entities:

In addition to Local Business Enterprise (LBE) and Small Local Business Enterprises (SLBE), the City of Oakland added two new certification categories to enhance opportunities for small emerging firms and firms that produce goods locally.

- (1) Very Small Local Business Enterprise (VSLBE) and
- (2) Local Produced Goods Local Business Enterprise (LPG-LBE)

The following "Certifications at a Glance", provides a general overview of certification criteria for each certification category.

- b) Certifications at a Glance:

CERTIFICATION CATEGORIES	CERTIFICATION CRITERIA
<b>(1) Local Business Enterprise (LBE)</b>	<ul style="list-style-type: none"> <li>• substantial presence in Oakland</li> <li>• operational for at least twelve (12) consecutive months</li> <li>• valid business tax license for twelve (12) consecutive months</li> <li>• fixed office space</li> <li>• employees in fixed office</li> <li>• permits and fines and fees are current</li> <li>• documents certifying the existence of the business (contracts, leases bills, etc)</li> <li>• registration in the City's iSupplier system</li> </ul>
<b>(2) Small Local Business Enterprise (SLBE)</b>	<p>All of the above plus:</p> <ul style="list-style-type: none"> <li>• Documentation of 3 years average annual gross receipts that are less than 30% of the SBA's size standard for the firm's industry sector.</li> <li>• Home office headquartered in Oakland</li> </ul>
<b>(3) Very Small Local Business Enterprise (VSLBE)</b>	<p>All of the above except:</p> <ul style="list-style-type: none"> <li>• Fully operational for six consecutive months</li> <li>• Average annual gross receipts at or below \$375,000</li> <li>• Headquartered in Oakland</li> </ul>
<b>(4) Local Business Enterprise –Locally Produced Goods (LBE-LPG)</b>	<p>Same as LBE except:</p> <ul style="list-style-type: none"> <li>• Business must manufacture goods within the Oakland geographic boundaries</li> <li>• Business must present proof of sales</li> </ul>

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<b>(5) Not for Profit Local Business Enterprise (NPLBE)</b>	Same as LBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>
<b>(6) Not for Profit Small Local Business Enterprise (NPSLBE)</b>	Same as SLBE plus: <ul style="list-style-type: none"> <li>• Business must produce documentation of nonprofit status</li> </ul>
<b>(7) Joint Venture Certification</b>	Same as L/SLBE certification plus: <ul style="list-style-type: none"> <li>• The certified LBE/SLBE partner of the joint venture is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture.</li> <li>• Must be approved by the City Attorney</li> </ul>

c) Certification criteria apply to both for profit and not-for-profit organizations as follows:

- i. An established operation with a substantial presence located and doing business or operating within the geographical boundaries of the City of Oakland.
- ii. Fully operational for at least twelve (12) consecutive months prior to applying for certification. (or six (6) consecutive months for VSLBE)
- iii. A valid City of Oakland Business Tax certificate issued no less than twelve (12) consecutive months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.
- iv. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For all levels of SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.

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- v. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.
- vi. The business must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.
- vii. All taxes, fees, permit fees, and fines shall be current.
- viii. Upon request by the City's certifying officer, the business must possess and make available for inspection the following documentation citing the Oakland business street address:
  - Executed (i.e. signed by all parties) copies of past/current contracts;
  - Oakland Business Tax Certificate and federal tax identification number;
  - Executed lease or other written agreement for occupancy of the Oakland office;
  - Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)
- ix. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to:
  - Commercial advertising
  - On-site signage
  - Letterhead
  - Previous Lease Agreements
  - Marketing materials
  - Listing in the telephone book.
- x. Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three most recent fiscal years in order for the City to determine compliance with established business size standards.

### d) Certification Eligibility Standards

Ownership and Control for Small Local Business Enterprise. The following standards shall be used by the City to determine if a firm is owned and controlled by one or more owners or businesses and eligible for certification as a Small Local Business Enterprise:

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An eligible small local business shall be an independent business. The ownership and control of the SLBE shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The small local business owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax, corporate or local status purposes is not necessarily sufficient for recognition as an SLBE. In determining whether a potential SLBE is an independent business, the City shall consider all relevant factors, including the date the business started, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with non-local firms.

The owner(s) of the small local business must also possess the power to direct or cause the direction of the management and policies of the firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owners. There shall be no restrictions that would prevent the local business owners, without the cooperation or vote of any non-local owners, from making a business decision of the firm. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)

Where the actual management of the firm is contracted out to individuals other than the owners, those persons who have the ultimate power to hire and fire the managers are, for the purposes of this part, considered controlling the business. The contribution of capital or expertise by the local owner(s) to acquire their interests in the firm shall be real and substantial. Newly formed firms and firms whose ownership and/or control have changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities. Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.

SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

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### e) Certification Process:

#### Step 1 – The Application:

Applicants may apply for certification on-line or request a hard copy from Contracts and Compliance. For the on-line process, down-load the application from the website maintained by Contracts and Compliance through the City's website. Go to <http://www.oaklandnet.com>. Select Contracting Opportunities under the "Jobs and Contracts" link. Then click on "Certification" and select the form and appropriate supporting document. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, remember to attach the last three most recent business tax returns. These are essential in determining if your business meets the small business size standard.

#### Step 2 – The Review Process:

100 percent site visits and desk audits are conducted for all first time certification applications. Re-certifications may be subject to site visits based on factors such as change in address, ownership and/or size.

The site visits will be scheduled within 10 working days of receipt of all required documentation. Pending no further questions or changes in status or conditions, a determination will be rendered within 10 working days of the site visits.

All applicants are asked to participate fully with the certification process. Failure or refusal to furnish requested information or to participate in the process will void the application. During the process of certification, the City may review any documentation or information necessary to determine eligibility.

To ensure timely processing of certification applications, it is strongly suggested that all applicants submit an application for certification and re-certification a minimum of four (4) weeks prior to a bid opening or proposal submittal due date.

Please remember that all certified firms must have a valid certificate and/or a signed certification letter in order to receive credit for participation. Certifications must be current and valid prior to the submittal due date in order for the local participation to count toward meeting the 50% businesses participation requirement.

Certification status is confirmed during the compliance evaluation process and businesses will only earn credit for business participation if there is a valid certification in place. If a certification has lapsed, a business will not earn credit for local Oakland business participation.

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Certifications with another agency do not constitute certification with the City of Oakland. The City enjoys a collaborative relationship with other agencies and as such may be able to reduce paper work, but the City reserves the right to approve LBE/SLBE status from other government or City agencies and request additional documentation.

Firms or individuals who knowingly submit false information concerning their certification status are subject to actions for fraud under the State and Federal False Claims Act and will be debarred from bidding on future City work for a period of three (3) years.

Re-Certification: A City of Oakland certification is valid for a period of two years, unless otherwise specified. At the end of the certification period the business must apply for re-certification. Notwithstanding the above, the City may require re-submittal of current documentation and information in the event a LBE/SLBE certification is challenged.

To ensure timely processing of re-certifications, even if a site visit may not be necessary, it is strongly suggested that you re-apply a minimum of four (4) weeks prior to a bid opening or proposal submittal due date.

### 5. The City's Living Wage Ordinance (LWO)

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 \$12.53 with health benefits or \$14.40 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Rates are adjusted effective July 1<sup>st</sup> of each year.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least **\$1.87 per hour**. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.



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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) <http://www.irs.gov> and <http://www.irs.gov/individuals/article/0,,id=96466,00.html>
  - 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.
6. Minimum Wage Ordinance (MEASURE FF)

Pursuant to the Oakland Municipal Code Chapter 5.92, the New Minimum Wage Law became effective March 2, 2015.

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Oakland employers are subject to the federal, state and Oakland minimum wage laws. When there are conflicting requirements in the laws, the employer must follow the stricter standard. In the case of minimum wage, Oakland employers must pay employees the rate that is most beneficial to the employee. Thus, since Oakland's current law requires a higher minimum wage rate than does the state and federal law, all employers that have employees who perform work in Oakland who are subject to the laws must pay at least the City's minimum wage rate.

The Measure: (1) establishes a \$12.55 per hour minimum wage (2) requires paid sick leave and (3) requires payment of service charges to hospitality workers. For further information, please go to the following website: <http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

### 7. Equal Benefits Ordinance (EBO)

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

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

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

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

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[http://library.municode.com/HTML/16308/level2/TIT2ADPE\\_CH2.32EQBEOR.html#TOP](http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEOR.html#TOP)  
TITLE

8. 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 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, 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: <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim

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inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com).

### 9. 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.
- 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

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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.

### 10. 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.

### 11. Pending Dispute Disclosure Policy:

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

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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 Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance).

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

Unless a written waiver is obtained from the City's Risk Manager, Contractors must provide the insurance as found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (Schedule Q). A copy of the requirements are attached and

## APPENDIX E: COMPLIANCE WITH CITY COUNCIL POLICIES

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, 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:

Contract Analyst: Paula Peav, [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com)

Compliance Officer: Vivian Inman, [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com)

## **APPENDIX E: COMPLIANCE WITH CITY COUNCIL POLICIES**

19. All responses to the RFP become the property of the City.
20. The RFP does not commit the City to award a contract or to pay any cost incurred in the preparation of the proposal.
21. 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 RFP process.
22. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFP and/or RFP process, to obtain further information from any and all Contractor teams and to waive any defects as to form or content of the RFP or any responses by any contractor teams
23. 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.
24. Once a final award is made, all RFP responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City 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.
25. The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service providers' firm, or any immediate family of the preceding, or any sub-Contractor or contractor of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a Contractor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFPs, feasibility studies, master plans or preliminary discussions or negotiations.