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OAKLAND

2014 DEC -4 PM 2:22

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Sean Whent

SUBJECT: Lexipol Contract for Law Enforcement
Policy Management Services

DATE: December 2, 2014

City Administrator
Approval

Date

12-3-14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council approve a Resolution Authorizing the City Administrator, or Designee, to 1) Negotiate and Enter into a One-Year Contract with Lexipol, LLC, in an Amount Not to Exceed \$217,908, with the Option to Renew the Subscription Services in the Amount of \$50,408 per Year for Up to Four Additional Years, for Law Enforcement Policy Management Services for the Oakland Police Department (OPD), for a Total Contract Amount Not to Exceed \$419,540; and 2) Waive the Local/Small Local Business Enterprise Program (L/SLBE) provisions.

OUTCOME

The contract with Lexipol will provide a comprehensive policy management tool to track and document training, provide policy updates based on current case law, provide daily policy training updates to personnel, and provide OPD personnel with access to all OPD policies in a user-friendly, searchable format.

BACKGROUND/LEGISLATIVE HISTORY

On January 22, 2003, the City of Oakland entered into a five-year Negotiated Settlement Agreement (NSA) to resolve allegations of police misconduct raised in the civil case of *Delphine Allen, et. al., v. City of Oakland, et. al.* The City entered into the NSA with the intent of promoting sound police practices, police integrity and professionalism within OPD. On March 19, 2007, the Court extended the NSA for two years, and on November 24, 2009, the Court allowed for the termination of the NSA and the adoption of a narrower Memorandum Of Understanding (MOU) from 2010 to 2012, under which the City was credited for the compliance achieved. In 2012, the MOU was terminated and a more narrow 2-year Amended MOU (AMOU) was executed and approved by the Court.

Item: _____
Public Safety Committee
December 16, 2014

Under the NSA/AMOU, OPD must track all training of NSA-related policies to provide proof that training has occurred. OPD currently uses PowerDMS as the primary tool for digitally documenting training and providing employees access to OPD policies, procedures, and forms while on duty. As of January 2015, PowerDMS will no longer support the version used by OPD. Although OPD has transitioned to the new cloud based version of PowerDMS, it is primarily a document management system and lacks key features that are important for maintaining police policies and training. These features include timely updates based on changes to law and contemporary police practices, daily training bulletins, and testing methods. Lexipol is a comprehensive policy development, cataloging, and training system that includes legal updates for law enforcement based on case law updates and changes in best practices.

ANALYSIS

To maintain policy compliance with the NSA/AMOU, reduce liability associated with insufficient policies and training, and increase efficiency, OPD needs a comprehensive solution for policy management and training. PowerDMS does not provide expertise in law enforcement policy management and training. In order to maintain contemporary police policies and training records, OPD not only needs a technology solution for managing policy and training records, it needs a solution for real-time policy updates as case law and best practices evolve.

The City conducted a competitive solicitation process (Request for Proposals/Qualifications) for law enforcement policy management services. The City received a single response to the Request for Qualifications – Lexipol. Representatives from OPD reviewed the proposal.

Lexipol has been providing public safety policy and training solutions since 2003. They deliver their services through a web-based development system and integrated training component. Lexipol works with over 1,500 public safety agencies across 15 states. Lexipol will provide a web-based policy and training system, under which OPD can maintain all its policies, updates, and training records. The Lexipol contract also includes a methodology for updating policies and staying current on contemporary law enforcement practices. Lexipol will implement a system customized for OPD and provide an annual subscription service, as detailed below

- Implementation: Comprehensive review of all OPD policies; editing and merging of policies, as necessary; and publishing of a complete policy manual
- Subscription Services: Online policy manual, policy updates, document management, and training content and testing; daily training bulletins with real time testing modules; and reporting features to monitor training provided

The implementation cost is for an amount not to exceed \$165,000. The subscription fee for the first year is \$52,908, and \$50,408 per year for option years two through five. The Compliance Director/Monitor was consulted for this project and has approved the contract with Lexipol.

Staff asks that the Local and Small Local Business Enterprise Program provisions be waived as Lexipol is located in Aliso Viejo and will perform nearly all of its work remotely. In addition, Lexipol was the sole respondent to OPD's RFP/Q and it has no resources located in Oakland.

Lexipol has requested modified contract language related to Sections 7 - ownership, 8 - copyright, and 15 - indemnification (moved to Section 17 in modified agreement) of the City's standard Professional Services Agreement (*Attachment A*). Lexipol maintains that the subscription material provided to OPD under the contract is proprietary and protected under U.S. copyright. This would include any modifications that OPD would make to subscription material, which Lexipol deems to be "Derivative Works." Rather than the standard City requirement that it owns all copyright and trademarks to work performed pursuant to contract, Lexipol would be the copyright and trademark owner of all subscription materials and Derivative Works resulting from this Agreement. Regarding indemnification, Lexipol seeks to limit its obligations to defend and indemnify the City to breaches of contract and acts of willful misconduct or gross negligence. Also, Lexipol seeks to add two new Sections – (1) Right to Use: Limitations on Use of Subscription Material and Derivative Works (section 9 in modified agreement), and (2) Limitation on Liability (section 18 in modified agreement). Again, these two new Sections seek to have Lexipol maintain ownership over all Subscription Materials and Derivative Works and to limit Lexipol's liability to breaches of contract and acts of willful misconduct or gross negligence. The Office of the City Attorney is providing a separate attorney-client memo regarding the legal impact of these changes for the Council's information.

The Police Department requests City Council authorization to enter into a contract with Lexipol, in an amount not to exceed \$217,908, with the option to renew the subscription services for up to four additional years, for law enforcement policy management services for OPD.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The Office of Contracts and Compliance, the City Attorney's Office, and the Budget Office were consulted in preparation of this report.

COST SUMMARY/IMPLICATIONS

AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Implementation	\$165,000
Subscription Fee for Year 1	\$52,908
Total Project Costs for Year 1	\$217,908
Subscription Fee for Year 2	\$50,408
Subscription Fee for Year 3	\$50,408
Subscription Fee for Year 4	\$50,408
Subscription Fee for Year 5	\$50,408
Total Project Costs	\$419,540

SOURCE OF FUNDING:

Funds for this contract amendment shall be drawn from the General Purpose Fund (1010), Office of Inspector General (OIG) Org (101130), Contract Services Account (54919), Agency-wide Administration Program (PS01). Funds for renewing the subscription services in years two through five will be drawn from OPD's baseline budget appropriations. The Project Manager will monitor this contract.

SUSTAINABLE OPPORTUNITIES

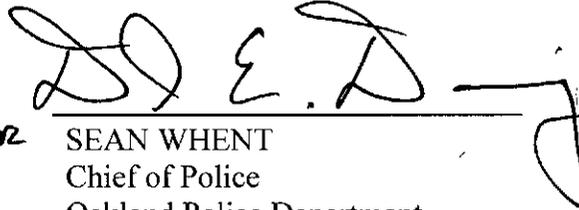
Economic: A well-trained police department that maintains contemporary police policies is critical for ensuring professionalism and reducing liability and risk for the City.

Environmental: No environmental opportunities have been identified.

Social Equity: The police reforms the City has instituted, including the revamping of policies and training, enhance OPD's ability to provide highly professional services in ensuring the public safety of the residents of Oakland.

For questions regarding this report, please contact Kristin Burgess-Medeiros at (510) 238-7097.

Respectfully submitted,



for

SEAN WHENT
Chief of Police
Oakland Police Department

Reviewed by:
Anthony Souza
Lieutenant
Inspector General

Prepared by:
Kristin Burgess-Medeiros
Police Program and Performance Auditor
Office of Inspector General

Attachment A – Draft Professional Services Agreement with Lexipol, LLC

--Resolution

**PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
Lexipol**

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

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of Month Date, Year between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and Lexipol ("Contractor" or "Lexipol").

2. Scope of Services

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

3. Time of Performance

Contractor's services shall begin on Month Date, Year and shall be completed Month Date, Year, with the option to renew the subscription services for an additional four years. Any option to renew the Agreement must be made in writing by both parties

4. Compensation and Method of Payment

Contractor will be paid for performance of the scope of services an amount that will be based upon actual costs but that will be "Capped" so as not to exceed \$217,908 for one year, with the option to renew subscription services in the amount of \$50,408 per year for an additional four years for a total not to exceed amount of \$419,540 for five years, based upon the scope of services in **Schedule A** and the budget by deliverable task and billing rates in **Schedule B**. The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Contractor's actual costs exceed the Capped amount. Invoices shall state a description of the **deliverable** completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

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

5. Independent Contractor

a. Rights and Responsibilities

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

b. Contractor's Qualifications

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

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, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

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

g. Extra Work

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

6. Proprietary or Confidential Information of the City

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

7. Ownership of Results

Subject to Sections 8 and 9 below, any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However,

Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright; Derivative Works; Lexipol's Ownership

City acknowledges and agrees that the Subscription Material (as defined below) is a proprietary product of Lexipol, protected under U.S. copyright. City is hereby given the right to prepare Derivate Works (as defined below); provided, however, that City acknowledges and agrees that Lexipol will be the sole owner of all right, title and interest in and to all Derivative Works prepared by or for City, including all copyrights pertaining thereto, and City hereby assigns and transfers to Lexipol all right, title and interest in and to all Derivative Works prepared by or for City, including all copyrights pertaining thereto. City will not remove from any copies of the Subscription Material provided by Lexipol to City any copyright notice or other proprietary notice of Lexipol appearing thereon, and shall include such copyright and other notices at the appropriate place on each copy of the Subscription Material and each copy of any Derivative Work made by City that is published or displayed by any means or in any medium. For purposes of this Agreement, (a) "Subscription Material" means the policy manuals, supplemental policy publications, daily training bulletins and other materials provided by Lexipol to City from time to time during the term of this Agreement under the subscriptions purchased by City, and (b) "Derivative Work" means a work that is based on the Subscription Material or any portion thereof, such as a revision, modification, abridgement, condensation, expansion, or any other form in which the Subscription Material or any portion thereof may be recast, transformed, or adapted and that, if prepared without authorization of Lexipol, would constitute copyright infringement or other infringement of proprietary rights of Lexipol. For purposes of this Agreement, a Derivative Work also includes any compilation that incorporates any portion of the Subscription Material.

9. Right to Use; Confidential Information

a. Right to Use. On and subject to the terms and conditions contained in this Agreement, City is hereby granted a perpetual right to use, solely for the City's business purposes, the Subscription Material and any Derivative Works prepared by or for City. City will not copy, republish, lend, distribute, post on servers, transmit, redistribute, display, in whole or in part, by any means or medium, electronic or mechanical, or by any information storage and retrieval system, any Subscription Material or Derivative Work prepared by or for City other than as expressly authorized by the immediately preceding sentence. City will not import any Subscription Material or any Derivative Work prepared by or for City into any third party knowledge/content management system or service which provides services comparable to the services provided under this Agreement in competition with Lexipol, regardless of commercial purpose or compensation, unless compelled to do so or unless permitted by Lexipol. The foregoing does not, however, prohibit or restrict City from providing Subscription Material or Derivative Works prepared by or for City pursuant to an order from a court or other governmental agency or other legal process, nor does it prohibit or restrict City from displaying the adopted/approved final policy document on a publicly accessible website for official City purposes.

b. 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. 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.

Exceptions. (i). The obligations of this Section 9(b) 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 Party without access to or use of the Confidential Information; (v) was provided to the Party by a third party who, to the best of the Party'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 (A) notify the disclosing Party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, and (B) if requested, cooperate with the disclosing Party to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

(ii). 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.

10. Audit

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

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

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

11. 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.

12. 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.

13. 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.

14. Title of Property

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

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

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

15. Insurance

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

16. 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 (other than Subscription Materials) 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 the Change Notice. Notwithstanding as may be otherwise provided herein, if for any reason Contractor should fail to timely accept or reject a Change Notice in writing, such Change Notice shall be deemed accepted.

17. Indemnification

- a. Subject to Section 17(i) below, but notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
 - (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
 - (iv) Claim for personal injury (including death) or loss or damage to tangible or intangible property, but excluding damages arising solely from the gross negligence or willful misconduct of any Indemnitee;
- b. For purposes of the preceding Subsections (i) through (iv), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 17. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 17 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this Section 17 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.
- h. This indemnification obligation includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or, subject to the following paragraph, arising out of the failure of Contractor to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor shall have control, subject to the reasonable approval of the City, of the defense of any action for which a claim of indemnification is made under this Section 17 and all negotiations for its settlement or compromise, provided, however, that when substantial principles of government or public law are involved, or when involvement of the City is otherwise mandated by law, the City may elect, in its sole and absolute discretion, to participate in such action at its own expense with respect to attorneys' fees and costs, but not liability, and the City shall have the right to approve or disapprove any settlement, which approval shall not be unreasonably withheld or delayed. The City shall reasonably cooperate in its defense and any related settlement negotiations.
- i. In developing the Subscription Materials and providing the services under this Agreement, Lexipol will make a good faith effort to comply with all applicable statutes,

case law and industry standards in effect at the time such Subscription Materials and services are provided to City. While Lexipol has made such a good faith effort, City acknowledges and agrees that Lexipol will have no liability to City or any other person or entity arising out of, in connection with, or related to the Subscription Materials, or any act or omission by City or its personnel pursuant to, or in reliance on, any of the Subscription Materials.

18. Limitation of Liability

Lexipol's cumulative liability to City and any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement or the use of any Subscription Materials shall not exceed the aggregate amount paid by City to Lexipol under this Agreement. In no event shall Lexipol be liable for any indirect, incidental, consequential or exemplary damages or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether City's claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action, with the exception of any claim based upon the willful conduct or gross negligence of Lexipol.

19. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of: i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

20. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

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

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project

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

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

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

Prompt Payment invoice and claim forms are available at the following City of Oakland website:

<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 inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandnet.com.

21. Arizona and Arizona-Based Businesses

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

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

22. Dispute Disclosure

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

23. Termination on Notice

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

24. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already

made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

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

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2)

terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

25. Non-Discrimination/Equal Employment Practices

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

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

- a. **Requirement** – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are taken into account in the calculation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s). A business must be certified by the City of Oakland in order to earn credit toward meeting the fifty percent

requirement. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies for non-certified LBEs and non-local business enterprises.

- b. Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
- c. Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
- d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.
- f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts
- g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F, Exit Report and Affidavit** for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
- i. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.

- j. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its subcontractors and suppliers, by completing **Schedule D, Ownership, Ethnicity, and Gender Questionnaire**, and **Schedule E, Project Consultant Team**, attached and incorporated herein and made a part of this Agreement.
- k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

27. Living Wage Ordinance

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

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$12.75 with health benefits or \$14.10 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, Contractor shall pay adjusted wage rates.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.83 per hour. Contractor

shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.

28. Equal Benefits Ordinance

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

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

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

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

29. City of Oakland Campaign Contribution Limits

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

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

30. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P, 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 **Schedule P**, attached hereto.

31. Political Prohibition

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

32. Religious Prohibition

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

33. Business Tax Certificate

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

34. Abandonment of Project

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

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

35. Validity of Contracts

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

36. Governing Law

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

37. Notice

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

(City of Oakland)

Oakland Police Department
455 7th Street, 8th Floor
Oakland, CA 94607
Attn: Timothy Birch

Name of Contractor

Address
City State Zip
Attn: Project Manager

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

38. 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.

39. Modification

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

40. 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.

41. Time of the Essence

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

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

43. Approval

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

44. Inconsistency

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

City of Oakland,
a municipal corporation

Name of Contractor

(City Administrator's Office) (Date)

(Signature) (Date)

(Agency Director's Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Date of Expiration

Resolution Number

(City Attorney's Office Signature) (Date)

Accounting Number

END OF PROFESSIONAL SERVICES CONTRACT

Schedule Q

INSURANCE REQUIREMENTS PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS

(Revised 08/01/11)

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 arising from premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)
 - A. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents and employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents and employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ii. **Automobile Liability Insurance**. Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. **Worker's Compensation insurance** as required by the laws of the State of California. 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, \$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** appropriate to the contractor's profession with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees and volunteers as insured's in the Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a 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. Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;
- iii. 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.
- iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- v. Insurer shall carry insurance from admitted companies with a Best Rating of A VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name

of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

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

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees 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 rights 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

2014 DEC -4 PM 2:23 OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO 1) NEGOTIATE AND ENTER INTO A ONE-YEAR CONTRACT WITH LEXIPOL, LLC, IN AN AMOUNT NOT TO EXCEED \$217,908 WITH THE OPTION TO RENEW THE SUBSCRIPTION SERVICES IN THE AMOUNT OF \$50,408 PER YEAR FOR UP TO FOUR ADDITIONAL YEARS, FOR LAW ENFORCEMENT POLICY MANAGEMENT SERVICES FOR THE OAKLAND POLICE DEPARTMENT, FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$419,540; AND 2) WAIVE THE LOCAL/SMALL LOCAL BUSINESS ENTERPRISE PROGRAM (L/SLBE)

WHEREAS, in January 2003, the City Council approved settlement of *Allen vs. City of Oakland, et al.*, which resolved a multitude of claims of constitutional violations by a number of police officers and the City of Oakland's (City) failure to prevent those actions; and

WHEREAS, the City Council agreed to the Negotiated Settlement Agreement (NSA) which required the City to reform the institutional practices of the Oakland Police Department (OPD) relative to training, policies, supervision, investigations, enforcement, and personnel accountability under the oversight of an independent monitoring team; and

WHEREAS, with the Court's approval, the NSA was terminated by the end of 2009, and was superseded by a 2-year Memorandum of Understanding (MOU) in 2010, and by a 2-year Amended Memorandum of Understanding (AMOU) in 2012; and the City is required to continue to implement the remaining institutional police reforms; and

WHEREAS, compliance with the NSA is measured in two phases, policy development and training and policy implementation, and both phases must be documented and tracked; and

WHEREAS, maintaining contemporary police practices requires real-time policy updates, training, and testing methods as case law and best practices evolve; and

WHEREAS, Power DMS, the Department's primary document management system, is operationally unable to support OPD's on-going policy development and training needs. Moreover, the system lacks the features needed for OPD to track policy changes, cataloging, and

ensuring that OPD conducts regular training that incorporates legal updates and recommendations on best practices in the industry;

WHEREAS, Lexipol, LLC was the sole respondent to a competitive solicitation process (Request for Proposals/Qualifications) and has over 10 years of experience providing policy and training solutions to public safety agencies; and

WHEREAS, under the Lexipol contract, the Department will work with Lexipol consultants and the City Attorney's Office in conducting a comprehensive review of all police policies; assisting the Department with publishing a complete manual, updating policies based on changes to case law and contemporary practices; training and testing personnel; and providing a repository for documentation and tracking of policy updates and training provided; and

WHEREAS, Oakland municipal Code section 2.04.020B requires Council approval of contracts for technology-related professional products or goods in excess of \$50,000.00; and

WHEREAS, staff recommends that it is in the best interests of the City to waive its Local/Small Local Business Enterprise Program so that OPD can enter into a professional services agreement with Lexipol to provide subscription and law enforcement management policies to OPD; and

WHEREAS, sufficient funds have been budgeted in FY 2013-2015: General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Contract Services Account (54919), Agency Wide Administration Program (PS01) to cover the cost of implementation (\$165,000) and the first year of subscription services (\$52,908), in a total amount of \$217,908; and

WHEREAS, subscription services for years two through five, in an amount not to exceed \$50,408 per year, shall be drawn from OPD's baseline budget appropriations; and

WHEREAS, the City lacks qualified personnel to perform the necessary work, and the City Council finds and determines that the services authorized hereunder are of a professional, scientific or technical and temporary nature, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; now, therefore, be it

RESOLVED: That the City Administrator, or designee, is authorized to enter into a contract with Lexipol, LLC for a one-year implementation and subscription agreement to provide law enforcement policy management services to OPD, with the option to renew the subscription service for an additional four years for a total contract amount not to exceed \$419,540 for five years; and be it

FURTHER RESOLVED: That the City Council hereby waives the Local/Small Local Business Enterprise Program Provisions for the proposed contract with Lexipol; and be it

FURTHER RESOLVED: That sufficient funds to execute this agreement have been

budgeted in the Department's FY 2013-2015 baseline budget and will be drawn from: General Purpose Fund (1010), Office of the Inspector General (OIG) Org (101130), Contract Services Account (54919), Agency Wide Administration Program (PS01) to cover the cost of implementation (\$165,000) and the first year of subscription services (\$52,908) in a total amount of \$217,908; and be it

FURTHER RESOLVED: That sufficient funds to cover the subscription services for years two through five, in an amount not to exceed \$50,408 per year, shall be budgeted and drawn from the OPD's baseline budget appropriations; and be it

FURTHER RESOLVED: That the City Administrator, or designee, is authorized to carry out any actions necessary to fulfill the intent of this Resolution and accompanying Report, including completing all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this contract for services, except for any increase in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve this agreement as to form and legality and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES –

ABSENT –

ABSTENTION –

ATTEST _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California