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OAKLAND

2018 JUL 19 PM 3:13

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Anne E. Kirkpatrick  
Chief of Police

**SUBJECT:** Professional Services Agreement with  
Eberhardt Consulting

**DATE:** July 18, 2018

City Administrator Approval

Date:

7/19/18

## RECOMMENDATION

**Staff Recommends That City Council Adopt A Resolution Waiving The Advertising/Bidding And Request For Proposals/Qualifications Requirements And Authorizing An Extension Of Up To Two Years (Through August 31, 2020) Of The Professional Services Agreement Between The City Of Oakland And Eberhardt Consulting For Technical Assistance Services In Delphine Allen V. City Of Oakland, For Two Hundred Fifty Thousand and One Dollars (\$250,001) And A Total Contract Amount Not To Exceed Five Hundred Thousand Dollars (\$500,000).**

## EXECUTIVE SUMMARY

The City has achieved compliance with nearly all reforms mandated by the Negotiated Settlement Agreement (NSA). Three tasks remain in partial compliance. One of these is Task 34, which requires the Oakland Police Department (OPD) to collect demographic and other data on police stops. The Department has been collecting this data for over ten years and the data collection methods have evolved over time.

The City entered into a one-year contract with Eberhardt Consulting on September 1, 2017. This contract, in the amount of \$249,999, called for Eberhardt Consulting to provide technical assistance with regard to the collection and analysis of stop data and the implementation of the 50 reform recommendations outlined in *Strategies for Change*<sup>1</sup>, a report based on the analysis of stop data, Personal Digital Recording Device (PDRD) footage and further research conducted by Stanford University and Professor Eberhardt.

The City has committed to implementing the 50 recommendations (provided as **Attachment A**), and has 14 recommendations left to implement (provided as **Attachment B**), including a few related to the integration of stop data collection and analysis into the early intervention software system currently under development, called PRIME. The Plaintiffs' Attorneys, the court-appointed Independent Monitoring Team and the Court have all noted that inclusion of stop data analytics into PRIME and the full implementation of the remaining recommendations are important reform priorities. Professor Eberhardt and her team are vital to both of these tasks.

<sup>1</sup> <https://sparq.stanford.edu/strategies-for-change>

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The Department is therefore requesting to extend the 2017-18 contract for two years in the amount of \$250,001, for a total contract amount not to exceed \$500,000.

### **BACKGROUND / LEGISLATIVE HISTORY**

On January 22, 2003, the City entered into a negotiated settlement agreement ("the 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's intent was to promote 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). In 2012, the MOU was terminated and a narrower two-year Amended MOU ("the AMOU") was extended and approved by the Court.

A court-appointed Independent Monitoring Team ("IMT") assesses OPD's progress and determines whether it has achieved full compliance with each of the NSA reform tasks.

In October 2012, the Plaintiffs filed a motion to appoint a receiver. After settlement discussions, the parties jointly proposed, and the Court ordered the appointment of a Compliance Director that would provide technical assistance until OPD reached full compliance with all NSA tasks. The City Council subsequently passed Resolution 84189 C.M.S. on January 2, 2013, authorizing expedited purchasing for goods and services directed by the Compliance Director.

One of the most critical requirements of the NSA, Task 34, requires OPD to collect data on persons stopped by police with the intent of racial profiling. OPD also uses its stop data to analyze which policies, practices and policing strategies may be disparately impacting Oakland's communities of color. While OPD has made significant progress with this Task, it continues to refine its stop data collection and analysis to reach full compliance and sustainability.

In May 2014, at the direction of the Compliance Director, the City partnered with Stanford University and Professor Jennifer Eberhardt. This was to address tensions between the Oakland Police Department and the Oakland community and better manage risk through analysis of stop data and PDRD footage. Professor Eberhardt is a professor at Stanford in the Department of Psychology and co-director of SPARQ, a university initiative to use social psychological research to address pressing social problems. She has been recognized for her work investigating the consequences of the psychological association between race and crime. This contract complied with the procurement process specified in Resolution No. 84189 C.M.S.

Two separate contracts were executed for this work, one with Stanford University for gathering and analyzing stop data and Personal Digital Recording Device (PDRD) footage, and one with Professor Jennifer Eberhardt, as an independent consultant, for technical assistance on predictors and patterns which help to identify potentially at risk officers and research related to race and policing. Each contract followed the requirements of Resolution 84189 C.M.S. The result of Stanford's work was the *Strategies for Change* report, which outlined 50 recommendations for improving police-community relations.

On September 1, 2017, the City of Oakland entered into a separate Professional Services Agreement (PSA) with Eberhardt Consulting for one year for \$249,999 to provide technical assistance related to stop data collection and analysis and the implementation of the 50 *Strategies for Change* recommendations. This PSA was authorized through the Compliance Director's spending authority under Resolution No. 84189 C.M.S. The current contract expires on August 31, 2018.

### **ANALYSIS AND POLICY ALTERNATIVES**

OPD has invested great effort in developing a robust stop data collection program and risk management programs that monitor officer behavior, identify performance issues, and develop strategies for improving interactions with the community. Because there are virtually no benchmarks in the area of stop data analysis, OPD is not only engaged in self-evaluation, but has also partnered with Stanford University and Professor Eberhardt. The work with Stanford resulted in the report *Strategies for Change*. Included in the report were 50 recommendations to increase trust with the community. The City has committed to implementing all 50 recommendations, some of which require the participation of Professor Eberhardt and her team. The Plaintiffs' Attorneys, the IMT and the Court have made it clear these recommendations are a priority and the Department should continue to provide the Court with updates regarding their implementation.

The City has completed 36 of the 50 recommendations, including enhancing stop data collection and the use of body worn camera footage. These enhancements have improved stop data analysis and led to policy changes, specifically related to police searches, handcuffing, and probation and parole stops. Professor Eberhardt has served as the main consultant for the changes to the stop data form and statistical analysis of stop data. Professor Eberhardt's team has provided training to OPD on how to analyze stop data so staff can make more efficient use of the data on a real-time basis. A comprehensive analysis of the data helps Department supervisors and commanders mitigate risk, identify disparities, provide additional training, and evaluate their officers' enforcement stops to ensure they are in line with command direction.

The Department has also implemented recommendations—such as holding regular informal relationship-building meetings—meant to increase OPD's interactions and communication with the community. For example, OPD has implemented regular "living room conversation" meetings with residents across Oakland. At these meetings, small groups of neighbors gather with OPD representatives to listen, share information, and learn from each other. Participants can discuss specific problems which have increased police-community tension and work on solutions together. The first living-room meeting was led by Councilmember Desley Brooks in 2017, and they continue to occur on a monthly basis.

The 14 recommendations still in progress are anticipated to be completed by the fall of 2019. In addition to the tasks that still need to be completed by OPD and the City of Oakland, some recommendations will be completed by Professor Eberhardt and her team or require the assistance of Professor Eberhardt and her team. Recommendations that will be completed by Professor Eberhardt and her team are automating stop data narrative analysis (recommendation 14) and conducting customer-service audits after routine stops (recommendation 23). In

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addition, Professor Eberhardt and team are providing assistance with rigorously measuring the effects of all training (recommendation 29).

Professor Eberhardt's team will be conducting customer service audits after routine police stops and measuring the impact of the Department's Procedural Justice training. They will also be training Department to use software they developed which will help the department conduct more thorough audits of the narratives officers complete after stops. Perhaps most importantly, the Department will be collaborating with Professor Eberhardt's team on building stop data analytics and dashboards in PRIME—an early intervention system currently in development. This work will make officers' stop and risk management data (including PDRD footage) available to supervisors and commanders in PRIME, and allow supervisors to more easily identify and address disparities and performance issues.

Professor Eberhardt is uniquely positioned to effectively assess the Department's success in implementing the 50 recommendations. The IMT and the Plaintiffs' Attorneys rely on her team's input and assessments with respect to stop data and the implementation of the recommendations. To ensure compliance with Task 34 and successful completion of the 50 recommendations, the contract with Eberhardt Consulting will need to be extended through at least the anticipated implementation of PRIME in July 2019. While OPD hopes to achieve NSA compliance with the full implementation of PRIME, federal monitoring—and the potential need for technical assistance—will continue during the one-year sustainability period specified in the NSA and AMOU. Accordingly, OPD seeks an extension of the Eberhardt Consulting contract for a period of up to two years (through August 2020).

### **FISCAL IMPACT**

Funding will come from the General Purpose Fund (1010), Org (101130), Project (1001225), Task (A468571), Award (20401).

### **PUBLIC OUTREACH / INTEREST**

In light of national scrutiny on police-community relations and the NSA reforms addressing stop data, OPD has been building and improving its stop data and risk management programs. The goal is twofold: to ensure that officers do not profile people based on race and to develop positive and robust community relationships. OPD has made great progress in its stop data program and is committed to continued improvement. The partnership between OPD and Professor Eberhardt will continue to support these efforts.

### **COORDINATION**

This report and legislation have been reviewed by the Office of the City Attorney and the Budget Bureau.

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**SUSTAINABLE OPPORTUNITIES**

**Economic:** No economic opportunities were identified with this report.

**Environmental:** There are no environmental issues associated with this report.

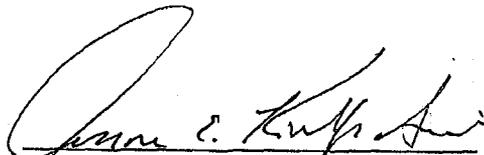
**Social Equity:** A comprehensive and effective stop data program will help OPD address concerns with social equity.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That City Council Adopt A Resolution Waiving The Advertising/Bidding And Request For Proposals/Qualifications Requirements And Authorizing An Extension Of Up To Two Years (Through August 31, 2020) Of The Professional Services Agreement Between The City Of Oakland And Eberhardt Consulting For Technical Assistance Services In Delphine Allen V. City Of Oakland, For Two Hundred Fifty Thousand and One Dollars (\$250,001) And A Total Contract Amount Not To Exceed Five Hundred Thousand Dollars (\$500,000).

For questions regarding this report, please contact Kristin Burgess, Police Program and Performance Audit Supervisor, at 510-238-7097.

Respectfully submitted,



ANNE E. KIRKPATRICK  
Chief of Police  
Oakland Police Department

Prepared by:  
Kristin Burgess, Police Program and  
Performance Audit Supervisor  
Office of Inspector General  
Oakland Police Department

Reviewed by:  
LeRonne Armstrong, Acting Assistant Chief  
Oakland Police Department

Attachments (2):

**A – All Stanford Recommendations as of June 19, 2018**

**B – Additional Information about Outstanding Stanford Recommendations**

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**Stanford Recommendations as of June 19, 2018**

#	Original Recommendation	Status	Projected Completion
1	Continue collecting stop data	COMPLETED	
2	Add a field on the stop data form to capture squad information	COMPLETED	
3	Add a field on the stop data form to capture squad sergeant information	COMPLETED	
4	Update the stop data form as needed	COMPLETED	
5	Standardize, track, and analyze crime-related communications provided to officers	COMPLETED	
6	Add a field on the stop data form regarding Body Worn Camera usage	COMPLETED	
7	Capture Body Worn Camera footage	COMPLETED	
8	Use Body Worn Camera footage to train officers	COMPLETED	
9	Require officers to self-audit (racially charged) Body Worn Camera footage (Review of 2017 closed IAD cases of race allegations)	COMPLETED	
10	Use Body Worn Camera footage to ensure policy compliance	COMPLETED	
11	Invest in the development of a Body Worn Camera early warning system	ITD	July 2019
12	Build a stop data dashboard	ITD	July 2019
13	Automate stop data analysis	COMPLETED	
14	Automate stop data narrative analysis	STANFORD	
15	Assist researchers in building an automatic speech recognition system for Body Worn Camera footage	COMPLETED	
16	Improve systems for backing up and accessing Body Worn Camera footage	COMPLETED	
17	Hire a data manager	IN PROGRESS	December 2018
18	Partner with outside researchers to analyze and use data	COMPLETED	
19	Partner with outside researchers to conduct high-quality studies	COMPLETED	
20	Give officers individualized feedback on their stop data performance	COMPLETED	
21	Create new ways for officers to give feedback to command staff	COMPLETED	
22	Use complaint data more effectively	COMPLETED	
23	Conduct customer-service audits after routine stops	STANFORD	
24	Regularly administer community surveys	IN PROGRESS	September 2018
25	Make trainings shorter and more frequent	IN PROGRESS	September 2018

#	Original Recommendation	Status	Projected Completion
26	Expand training topics	IN PROGRESS	September 2018
27	Let officers choose which trainings to take	IN PROGRESS	September 2018
28	Incentivize training-in-action workshops	IN PROGRESS	September 2018
29	Rigorously measure the effects of all trainings	IN PROGRESS	September 2018
30	Hire a training coordinator	COMPLETED	
31	Implement living room meetings with residents and other monthly relationship-building (Stanford 31) meetings with residents out of uniform whenever possible and encourage other out-of-uniform community contact (Stanford 35)	COMPLETED	
32	Enhance the capacity of Community Resource Officers through attendance at relationship-building tables and living room meetings and use of social media platforms and electronic communications	COMPLETED	
33	Require squad-based community projects	COMPLETED	
34	Train officers and community members together	COMPLETED	
35	Implement living room meetings with residents and other monthly relationship-building (Stanford 31) meetings with residents out of uniform whenever possible and encourage other out-of-uniform community contact (Stanford 35)	COMPLETED	
36	Provide business cards for every investigative consensual encounter, detention, and community contact	COMPLETED	
37	Show more care in high-crime areas (through making contact with residents following reports of shots being fired)	COMPLETED	
38	Hold critical incident discussions and trainings	COMPLETED	
39	Host annual conference on police-community relations	IN PROGRESS	July 19, 2018
40	Develop and track measures of positive community engagement	COMPLETED	
41	Continue risk management meetings	COMPLETED	
42	Identify outlier officers	COMPLETED	
43	Monitor and reduce time pressure	COMPLETED	
44	Monitor and reduce stress and fatigue	COMPLETED	
45	Identify factors associated with high- and low-performing squads	COMPLETED	
46	Review handcuffing policies	COMPLETED	

**Stanford Recommendations in Progress**

11	<p><b>Invest in the development of a Body Worn Camera early warning system</b></p> <p>As part of PRIME (explanation) 2.0, the Oakland Police Department (OPD) will be integrating body worn camera footage to allow supervisors and commanders to immediately review stops, arrests, and uses of force. OPD anticipates this recommendation to be completed along with the implementation of PRIME 2.0 in July 2019. OPD is reliant upon the City of Oakland Information Technology Department to complete this recommendation.</p>
12	<p><b>Build a stop data dashboard</b></p> <p>This recommendation will also be implemented as part of the development of PRIME 2.0 in July 2019. OPD is reliant upon the City of Oakland Information Technology Department to complete this recommendation.</p>
14	<p><b>Automate stop data narrative analysis</b></p> <p>Stanford has developed a software tool that improves OPD's abilities to search and analyze officers' narrative accounts, which will particularly assist the Department's Office of Inspector General in conducting audits of stops, handcuffing, searches, and uses of force. Stanford needs to train individuals in OPD on the use of the software, to be completed no later than July 2018.</p>
17	<p><b>Hire a data manager</b></p> <p>OPD has identified this recommendation as one that could not be implemented because the funding request for the position was not approved as part of the overall City budget. OPD is currently working with the City of Oakland Department of Human Resources to determine if an existing, funded position can be reclassified and redefined to include the recommended data management skills.</p>
23	<p><b>Conduct customer-service audits after routine stops</b></p> <p>This recommendation was for an independent entity – such as a research team – to contact community members who have recently undergone a police stop and ask about their experience. OPD has elected to have Stanford conduct these interviews. Stanford is currently developing an audit protocol and determining an appropriate start date.</p>
24	<p><b>Regularly administer community surveys</b></p> <p>OPD has issued a Request for Proposal for professional polling services to conduct community surveys. The proposals are due on June 29, 2018.</p>
25	<p><b>Make trainings shorter and more frequent</b></p> <p>The OPD Training Division is currently developing scenario-based classes designed to improve police-community relations that range from two to four hours in length. These classes will be offered frequently. OPD hopes to have the classes developed no later than September 2018.</p>
26	<p><b>Expand training topics</b></p> <p>OPD conducted a Department-wide survey to determine what training topics sworn and professional staff members would like to see offered. The Training Division is working on finalizing classes on or before September 2018.</p>

	<b>Let officers choose which trainings to take</b>
27	The OPD Training Division is developing an online course catalog and calendar to allow personnel to select the elective trainings they would like to attend. Along with the new training classes, OPD is projecting a September 2018 completion date.
	<b>Incentivize training-in-action workshops</b>
28	OPD is working on developing internal and external opportunities for officers to receive continued training, particularly on social tactics. Officers who attend outside, non-mandatory trainings already receive positive supervisory notes in their personnel files. As with the other training-related recommendations, OPD is targeting a September 2018 implementation date.
	<b>Rigorously measure the effects of all trainings</b>
29	OPD has started this process by engaging Stanford to evaluate the mandatory, Department-wide Procedural Justice II training. All OPD members will have undergone this training by mid-July 2018. OPD expects Stanford to complete their analysis of the training and effects around September 2018.
	<b>Host annual conference on police-community relations</b>
39	This conference will be held in conjunction with the Mayor's Office. It is scheduled for July 19, 2018.
	<b>Review search policies</b>
47	Stanford's recommendation questions whether the discovery that an individual is on probation or parole should always trigger a search, and, if so, whether such practice helps or hinders community-police relations, individuals' rehabilitation processes, and the protection of the community from crime. An OPD working group was formed a new draft Department General Order (DGO) R-02: Searches of Individuals on Probation or Parole was written. The Office of the City Attorney has reviewed and approved the draft policy, which emphasizes that the primary purpose of probation and parole searches is to further legitimate law enforcement or rehabilitative interests, and that probation and parole searches should not be arbitrary, capricious, or harassing. The policy will also require officers to document articulable facts underlying their decision to initiate a parole or probation search. The IMT has conducted an initial review and OPD is in the final stages of internal review before returning to the IMT in early July for further discussion.
	<b>Produce and publish an annual Racial Impact Report</b>
49	This report is in final review stages. OPD anticipates publishing the report before the annual conference on police-community relations scheduled for July 19, 2018.

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

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 September 1, 2017 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and Eberhardt Consulting ("Contractor")

2. Scope of Services

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

3. Time of Performance

Contractor's services shall begin on September 1, 2017 and shall be completed August 31, 2018.

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 \$249,999.00, 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

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

8. Copyright

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

9. Audit

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

Contractor shall (a) permit the City to have access to those records for 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.

10. Agents/Brokers

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

11. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

## 12. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will 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.

## 13. Title of Property

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

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

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

## 14. Insurance

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

## 15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
  - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
  - (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
  - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
  - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
  - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall

Contractor agree to the settlement of any claim described herein without the prior written consent of City.

- e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.
- f. All of Contractor's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

16. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor 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.

17. Prompt Payment Ordinance

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

18. Arizona and Arizona-Based Businesses

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

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

19. Dispute Disclosure

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

20. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on August 31, 2018.

21. 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.

22. Non-Discrimination/Equal Employment Practices

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

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

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

- a. **Requirement – For Professional Services, 50% Local and Small Local Business Enterprise Program (L/SLBE):** there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/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 apply 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.

24. Living Wage Ordinance

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

this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. **Minimum compensation** – Said employees shall be paid an initial **hourly wage rate of \$13.32 with health benefits or \$15.31 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 1<sup>st</sup> of each year, contractor shall pay adjusted wage rate.**
- b. **Health benefits** – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.99 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.

25. Minimum Wage Ordinance

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

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

For further information, please go to the following website:

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

26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner 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**.

27. City of Oakland Campaign Contribution Limits

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

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

28. 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.

29. Political Prohibition

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

30. Religious Prohibition

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

31. Business Tax Certificate

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

32. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all 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 expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

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

33. Validity of Contracts

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

34. Governing Law

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

35. Notice

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

City of Oakland  
Oakland Police Department  
455 7<sup>th</sup> Street  
Oakland, CA 94607

Eberhardt Consulting  
562 Gerona Road  
Stanford, CA 94305-8449  
Attn: Dr. Jennifer L. Eberhardt

Attn: D/C LeRonne Armstrong

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

36. Entire Agreement of the Parties

This Agreement supersedes 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 parties, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

37. Modification

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

38. 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.

39. Time of the Essence

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

40. Commencement, Completion and Close out

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

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

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

41. Approval

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

42. Inconsistency

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

**City of Oakland,**  
**a municipal corporation**

**Eberhardt Consulting**

Deborah Baran 9/22/17 B

J. H. Eberhardt 9/13/17

(City Administrator's Office) (Date)

(Signature)

(Date)

Jan E. Kuylenstierna 9-22-2017

(Agency Director's Signature) (Date)

00164678

Business Tax Certificate No.

\_\_\_\_\_  
Approved as to form and legality:

\_\_\_\_\_  
Date of Expiration

Amia Hayes 9/21/17

(City Attorney's Office Signature) (Date)

\_\_\_\_\_  
Resolution Number

\_\_\_\_\_  
Accounting Number

**END OF PROFESSIONAL SERVICES AGREEMENT**

## Schedule Q

### INSURANCE REQUIREMENTS

(Revised 01/13/17)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

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

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

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

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/Errors and Omissions insurance, if determined to be required by HRM/RBD,** appropriate to the contractor's profession with limits not less

than \$ \_\_\_\_\_ each claim and \$ \_\_\_\_\_ aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:

- a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
  - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.
- v. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than \$500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of \$500,000 per occurrence and in the aggregate.
- vi. **Sexual/Abuse insurance.** If Contractor will have contact with persons under the age of 18 years, or Contractor is the provider of services to persons with Alzheimer's or Dementia, Contractor shall maintain sexual/abuse/molestation insurance with a limit of not less than \$1,000,000 each occurrence. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

b. Terms Conditions and Endorsements

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

- i. **Insured Status (Additional Insured):** Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance.

Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and

- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

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

e. Proof of Insurance

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

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All

coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

**g. Deductibles and Self-Insured Retentions**

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

**h. Waiver of Subrogation**

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

**i. Evaluation of Adequacy of Coverage**

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

**J. Higher Limits of Insurance**

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

**SCHEDULE A - Scope of Services (Amended as of August 31, 2017)**  
**Jennifer L. Eberhardt**

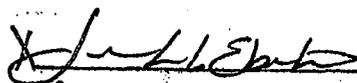
The Contractor will provide technical assistance—focusing upon the implementation of the 50 recommendations described in *Strategies for Change*, the Contractor's report summarizing findings across the entire scope of services outlined in the Stanford contract and the original Eberhardt TA contract.

The vast majority of the recommendations require the Department to take the primary role in implementation (with assistance from the Contractor). In addition, there are three recommendations (rec 15, 19, & 23) that the Contractor will take the lead on (with assistance from the Department). The City of Oakland will not be billed for services related to these 5 recommendations although it is the Contractor's hope that the Department and City will benefit from such services. The Department will continue to provide the same level of access to data (including PDRD) as agreed to in prior contracts.

To facilitate the relationship between the Contractor and the Department during the implementation of the recommendations, the Project Manager has put together a Stop Data Focus Group consisting of 15 OPD staff members of different ranks, levels of experience, and areas of expertise. The Project Director will continue lead the Stop Data Focus Group and will pull together subcommittees or recommend specific individuals from the group to assist on specific tasks as necessary.

In addition to meeting with members of the Stop Data Focus Group, the Contractor will attend a minimum of two Risk Management Meetings per quarter. The Contractor shall attend additional meetings (e.g. community meetings, Council meetings, All Parties Meetings) as necessary.

The Stop Data Focus Group will remain in place beyond the length of the current contract. The group will continue to provide input on policies and practices relevant to the recommendations covered under the current contract as well as the implementation of additional recommendations in the future. In addition to working with members of the Department, the group is expected to interface with researchers, community members, and other relevant stakeholders.

X  5/13/17  
Contractor Date

X  5/13/17  
Project Manager Date

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X Jennifer L. Eberhardt 9/13/17  
Contractor date

X [Signature] 9/13/17  
Project Manager date

REVISED  
7-18-2018

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

Approved as to Form and Legality

*Shirley Nynes*  
City Attorney's Office

2018 JUL 19 PM 3:13

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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RESOLUTION WAIVING THE ADVERTISING/BIDDING AND REQUEST FOR PROPOSALS/QUALIFICATIONS REQUIREMENTS AND AUTHORIZING AN EXTENSION OF UP TO TWO YEARS (THROUGH AUGUST 31, 2020) OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF OAKLAND AND EBERHARDT CONSULTING FOR TECHNICAL ASSISTANCE SERVICES IN *DELPHINE ALLEN V. CITY OF OAKLAND*, FOR TWO HUNDRED FIFTY THOUSAND AND ONE DOLLARS (\$250,001) AND A TOTAL CONTRACT AMOUNT NOT TO EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000)

**WHEREAS**, the City of Oakland has achieved compliance with nearly all reforms mandated by the Negotiated Settlement Agreement (NSA) in *Delphine Allen v. City of Oakland*, Case No. C00-4599 WHO (N.D. Cal.); and

**WHEREAS**, there are only three NSA-mandated reforms outstanding, all of which are in partial compliance; and

**WHEREAS**, one of the three outstanding NSA-mandated reforms, Task 34, requires the Oakland Police Department (OPD) to collect and analyze demographic and other data on police stops; and

**WHEREAS**, in 2014, at the direction of the Compliance Director, OPD partnered with Stanford University and Professor Jennifer Eberhardt to address tensions between OPD and the community and to better manage risk through analysis of stop data and Personal Digital Recording Device (PDRD) footage; and

**WHEREAS**, as a result of their analysis of OPD's stop data, Personal Digital Recording Device (PDRD) footage and related research, Professor Eberhardt and Stanford University published 50 recommendations for reform meant to reduce OPD's footprint on communities of color and improve police-community relationships; and

**WHEREAS**, on September 1, 2017, the City entered into a contract with Eberhardt Consulting for \$249,999, pursuant to which Professor Eberhardt and her team provide technical assistance to the Department regarding the collection and analysis of stop data and the implementation of the 50 recommendations to help achieve full compliance with Task 34; and

**WHEREAS**, OPD has implemented 36 of the 50 Stanford recommendations;

**WHEREAS**, Plaintiffs' Counsel, the court-appointed Independent Monitoring Team and the Court in the *Allen* case expect the City to complete its work with Professor Eberhardt related to both the collection and analysis of stop data and the successful implementation of the 14 remaining recommendations; and

**WHEREAS**, additional time (of up to two years) and funding (of up to \$250,001) is necessary for Eberhardt Consulting to continue its works on Task 34 compliance and the implementation of the remaining recommendations; now, therefore be it

**RESOLVED**: That the City Administrator or designee is authorized to execute a two-year extension of the contract with Eberhardt Consulting for technical assistance to help OPD achieve compliance with Task 34 of the NSA and implement the remaining recommendations for Two Hundred Fifty Thousand and One Dollars (\$250,001) for a total contract amount not to exceed Five Hundred Thousand Dollars (\$500,000); and be it

**FURTHER RESOLVED**: That the City Council finds it is in the best interests of the City to waive the advertising/bidding and request for proposals/qualifications requirements of Section 2.04.051(B); and be it

**FURTHER RESOLVED**: That the funds for the services described above will be allocated from the General Purpose Fund (1010), Org (101130), Project (1001225), Task (A468571), Award (20401); and be it

**FURTHER RESOLVED**: That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend, renew and/or amend such an agreement without returning to the City Council; and be it

**FURTHER RESOLVED:** That in accordance with Article IV, Section 401(6) of the City Charter, the agreement authorized by this resolution shall be approved by the City Attorney's Office as to form and legality before execution, 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, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY,  
GUILLÉN, KALB, KAPLAN AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California