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**REDEVELOPMENT AGENCY AND  
THE CITY OF OAKLAND  
AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: April 28, 2009

**RE: An Agency Resolution Authorizing A Contribution Of An Amount Not To Exceed Two Hundred Fifteen Thousand Dollars (\$215,000) From The Central District Redevelopment Project And Fifty Thousand Dollars (\$50,000) From The Central City East Redevelopment Project To The City Of Oakland Under The Cooperation Agreement To Fund The Development Of The Lake Merritt BART Station Area Plan Area Plan And Environmental Document**

**A City Resolution Accepting and Appropriating A Contribution Of Redevelopment Agency Funds Under the Cooperation Agreement In An Amount Not To Exceed Two Hundred Sixty-Five Thousand Dollars (\$265,000) And Authorizing The City Administrator To Negotiate And Execute A Professional Services Agreement With Dyett & Bhatia For Development Of The Lake Merritt BART Station Area Plan In An Amount Not To Exceed One Million Eighty-Five Thousand Dollars (\$1,085,000)**

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**SUMMARY**

Staff requests City Council approval of two resolutions to award a contract to Dyett & Bhatia for development of a specific plan and accompanying environmental document for the Lake Merritt BART Station Area which covers a one-half mile radius around the Lake Merritt BART station.

- The first resolution authorizes a contribution of \$215,000 from the Central District Redevelopment Project and \$50,000 from the Central City East Redevelopment Project to the City of Oakland under the cooperation agreement to fund the development of the Lake Merritt BART Station Specific Plan and environmental document.
- The second resolution is to accept and appropriate a contribution of Redevelopment Agency funds, and retain the urban and regional planning firm of Dyett & Bhatia to produce a Specific Plan (including land use and transportation analysis, cost estimates, design standards, Environmental Impact Report and recommendations related to land acquisition and infrastructure improvements) for the Lake Merritt BART Station Area Plan in accordance with the scope of services outlined in the October 2008 Request for Proposals.

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The City has also been awarded a grant of \$720,000 from the Metropolitan Transportation Commission (MTC) Station Area Planning Program to provide additional funding for this project. This award is contingent upon finalizing the contract with the Metropolitan Transportation Commission in mid April 2009. Project partners, Bay Area Rapid Transit (BART) and the Peralta Community College District (PCCD), will also contribute an additional \$50,000 each for a total contribution of \$100,000 to the project budget. The project would integrate a compilation of work conducted by the Bay Area Rapid Transit District (BART) and its consultant team through a grant funded by the California Department of Transportation (Caltrans) through its Community-based Transportation Planning grant program. The Lake Merritt BART Station Final summary Report completed in March 2006 lays the groundwork for specific planning efforts at the Lake Merritt BART station. The project will begin in July 2009 and is scheduled for completion within 30 months.

### **FISCAL IMPACT**

The fiscal impact to produce the Lake Merritt BART Station Area Plan and Environmental Document is reflected in the not-to-exceed amount of the Professional Services Contract of \$1,085,000. This amount includes \$985,000 for basic services and a project contingency of \$100,000.

As mentioned above, \$720,000 of grant funds will be available from the Metropolitan Transportation Commission – Program Grant Fund (2163), Organization 88229, project to be determined contingent upon finalizing the contract with the Metropolitan Transportation Commission in mid April 2009, with the remaining balance of \$365,000 coming from a contribution of \$215,000 from the Central District Tax Allocation Bond Series 2005 Fund (9553), Capital Improvement Projects Organization (94800), Parking Garage Development Project P130610; a contribution of \$50,000 from the Central City East Redevelopment Operations Fund (9540), Organization (88699), Miscellaneous Operating Account (52921), Project S233360 and a contribution of \$100,000 from the Peralta Community College District (\$50,000) and BART (\$50,000) to be budgeted in the Central City East Redevelopment District Operations Fund (9540), Redevelopment Agency Projects Organization (88699), Revenue Account (48714), for the Lake Merritt BART Station Project. The \$265,000 to be contributed by the Agency to the City will be appropriated to Oakland Redevelopment Projects (Fund 7780), Central City East Org (88699), project to be determined. The fiscal impact of implementing the Specific Plan, and of operating and maintaining the future improvements, will be unknown until the cost estimates tied to project deliverables are completed.

### **BACKGROUND**

The Lake Merritt BART Station Area is a neighborhood ripe for change. Over the past decade, Oakland has experienced a resurgence in housing and commercial development. Many of these developments are within ½ mile of Lake Merritt BART station on the neighborhood's periphery, in Downtown, along Lake Merritt, and near the Waterfront. Despite this transformative growth,

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the area immediately around the Lake Merritt BART station has seen relatively little change in the past 20 plus years. Although it is a hub for government and institutional uses, and contains moderate density housing as well, it has little identity as a place in its own right. Rather, Lake Merritt station is on the edge of several growing residential neighborhoods such as the Gold Coast, Chinatown, the Loft District, the Waterfront Warehouse District, and San Antonio/Clinton Park. It is the goal of this study to unlock the promise of this station area as a new node for transit oriented development in Oakland that for the first time connects these neighborhoods to one central location.

While previous planning efforts in the immediate station area have focused mainly on transportation, this Specific Plan would be the first to comprehensively re-examine how land use and urban design changes can support the transition of the Lake Merritt station area into a more vibrant urban place. The Specific Plan will propose land use changes in the station area that will reduce the real and psychological barriers to increased transit use from both the immediate area and surrounding neighborhoods. By potentially increasing residential and commercial density, this plan will seek to create a core of beneficial activity around a rejuvenated transit station. Simultaneously, the plan will seek to reinforce and integrate the cultural and recreational resources that make this station unique, including Laney College, the Oakland Museum of California, and Lake Merritt and Channel Parks. As a part of this Specific Plan, a programmatic EIR will be completed, and necessary updates will be incorporated into zoning codes and the General Plan.

The goal of this project will be to create a specific plan that provides for an urban mixed use, mixed-income development with retail and high density housing development opportunities. Infrastructure improvements for bicycle, pedestrian, transit, and parking that provide connections with transit, regional and local commercial and activity centers, and housing in surrounding neighborhoods will need to be integrated into the project.

## **KEY ISSUES AND IMPACTS**

The recommended Specific Plan consultant was selected as a result of a formal consultant selection process. The process began with a competitive Request for Proposals (RFP), followed by an objective interview process. Interviewers from the Association of Bay Area Governments (ABAG), AC Transit, Bay Area Rapid Transit (BART), the Peralta Community College District (PCCD), the Chinatown Chamber of Commerce, Asian Health Services, and representatives of the City's Community and Economic Development Agency (CEDA) Transportation Services, Economic Development, Redevelopment, and Major Projects divisions were invited to participate. A total of five firms responded to the RFP. After evaluation and scoring of the written proposals, each of the five firms were invited to provide oral presentations.

The firms included:

- 1) Design, Community and Environment
- 2) Pacific Municipal Associates
- 3) Dhyett & Bhatia
- 4) Community Design + Architecture
- 5) PB Placemaking

The panel interviewed firms based on the following criteria:

- 1) Ability to deliver quality design within a set budget and timeframe.
- 2) Cohesiveness and appropriateness of the project team and organization.
- 3) Understanding of the project design.
- 4) Demonstrated relevant experience.
- 5) Responsiveness to questions.
- 6) Ability to provide a high quality customer service to CEDA and its client users.

Based on the above criteria, Dyett & Bhatia was ranked as the top rated firm to provide the services.

The Agreement (**Attachment A**) before the Council has resulted from negotiations between the City and the number one ranked consulting firm, Dyett & Bhatia (San Francisco), as ranked by the selection team.

Dyett & Bhatia along with their sub consultants bring extensive experience in projects that are similar in scale and scope to the Lake Merritt BART Station Area Plan, including downtown specific plans for Phoenix and San Diego, transit strategies for Santa Clara and Milpitas, and design of high density mixed use buildings throughout the county. Other recent assignments include the Capitol Area Plan for the State of California.

The proposal and fee schedule submitted by Dyett & Bhatia is believed to represent a fair and reasonable fee for services that will fulfill the desired Specific Plan and environmental document objectives.

Local subconsultants for the specific plan and accompanying environmental document include Conely Consulting Group, Kimley –Horn Associates, Dowling Associates, and Bottomley Design and Planning and will provide a total SLBE participation of 29% of the contract amount.

## **PROJECT DESCRIPTION**

Based on analysis of existing documents and community input, a Specific Plan for the study area (**Attachment B**, project area map) will be developed by Dyett & Bhatia to include a comprehensive evaluation of the following topics:

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- 1) Overall plan objectives for transit-oriented land use and development, transportation and circulation, and urban design within the study area.
- 2) Site organization including distribution, location and extent of land uses, including open space within the area covered by the plan.
- 3) Regulatory framework for achieving preferred land use model (e.g., zoning and parking amendments, redevelopment authority).
- 4) Urban design goals expressed through form-based design standards and guidelines that integrate existing historical resources in the area.
- 5) Existing and future opportunities for transit-oriented high density housing.
- 6) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste, disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
- 7) Standards and criteria by which development will proceed, and standards for the conservation, development and utilization of natural resources, where applicable.
- 8) A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out landuse, zoning, and urban design.
- 9) Detailed cost estimates for recommended improvements and a phasing strategy for implementation of required public improvements if full funding is not immediately available.
- 10) Recommendations for building design guidelines in the study area to enhance development opportunities and maintain uniform building and signage appearance.
- 11) Environmental Impact Report (EIR) to satisfy the requirements of CEQA.

The EIR analysis shall evaluate the environmental impacts of the Specific Plan for existing conditions and future conditions (future conditions currently include the years 2015 and 2030).

As outlined in the proposed Scope of Services, Dyett & Bhatia will meet with a Technical Advisory Committee and Community Stakeholders convened by the City on a regular basis to discuss and support development and direction of the planning process. Dyett & Bhatia has proposed an extensive community participation process to assist in achieving support and acceptance of specific plan and design standards for the Lake Merritt BART Station Area Plan as they evolve. This will begin with a series of stakeholder interviews, a community survey process and self guided walking tour and an Oaklandnet.com website link for the project, designed to inform stakeholders and the general public of the study and how the study will be used as the guide for development of the waterfront.

Additionally, there will be six community workshops. The first community workshop is designed to bring together community leadership and area merchants. A second workshop is designed to bring together the leadership from all of Oakland and identified project stakeholders to produce a direction for final vision. A series of roundtable discussions with Councilmembers, City staff, developers, key business and organized neighborhood groups to complete community outreach associated with the visioning stage of the project will also be conducted.

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The general public will also be invited to four public workshops designed to afford Oakland citizens the opportunity to provide comments and feedback on plan recommendations and alternatives.

Several products will be generated to inform the specific plan effort. Products and associated milestones dates for review and discussion of the products are as follows:

- Notice to Proceed - May 2009
- Public Review of Existing Conditions Report – March 2009
- Public Review of Market Demand and Precedents Report – April 2009
- Public Review of Land Use and Urban Design Alternatives – July 2009
- Meetings with the Landmarks Advisory Board, Oakland Planning Commission and Oakland City Council - July 2009
- Public Review of Market Feasibility Analysis – August 2009
- Transportation Demand and Access Plan - August 2009
- Public Review of Infrastructure Analysis – August 2009
- Public Review of Public Realm Design Standards – October 2009
- Public Review of Preferred Land Use and Urban Design Concept – November 2009
- Meetings with Oakland Planning Commission and Oakland City Council – December 2009
- Public Review Draft Specific Plan and Related Zoning and General Plan Amendments – March 2010
- Public Review Draft Environmental Impact Report – March 2010
- Meetings with Landmarks Advisory Board and Oakland Planning Commission – May 2010
- Public Review Final Draft Environmental Impact Report (EIR) – July 2010
- Adoption of Proposed Zoning and General Plan Amendments – September 2010
- Specific Plan Adoption and EIR Certification – November 2010 (City Planning Commission and then City Council)

## **EVALUATION OF PAST PERFORMANCE**

Dyett & Bhatia has not received funding from the City of Oakland for a professional services contract.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The proposed development of a specific plan in the Lake Merritt BART Station area is intended to strengthen and support existing communities through creation of compact communities with a diverse mix of housing, jobs, activities, and services to meet the daily needs of residents. Specific plans seek to increase housing choices and affordability and increase transportation efficiency and choices throughout Oakland.

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**Environmental:** By creating a specific plan, development opportunities, protection and stewardship for natural habitats, open spaces and agricultural land can improve. Concentrated development can also conserve resources, promote sustainability, and improve environmental quality.

**Social Equity:** Providing affordable housing and access to a variety of goods and services in a mixed use environment with direct access to transportation can increase and improve access to public health resources and increase safety within a community.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The specific plan for the Lake Merritt BART Station Area will include an accessibility plan for people with disabilities that ensure fully accessible transit stations, accessible paths of travel between the stations and surrounding areas, and visitable and habitable housing units where feasible. The City's accessibility program coordinator will be requested to participate in project review at various stages of each design process initiated.

## **RECOMMENDATIONS AND RATIONALE**

Staff recommends approval of two resolutions:

- An Agency resolution authorizing a contribution of \$50,000 from the Central District Redevelopment Project and \$215,000 from the Central City East Redevelopment Project to the City of Oakland under the cooperation agreement to fund the development of the Lake Merritt BART Station Area Plan and environmental document.
- A City resolution accepting and appropriating a contribution of redevelopment agency funds under the cooperation agreement in an amount not to exceed \$265,000 and authorizing a professional services agreement with Dyett & Bhatia in an amount not to exceed \$1,085,000 for planning, traffic engineering, design, infrastructure feasibility, environmental review, and project contingency associated with development of a specific plan for the Lake Merritt BART Station Area.

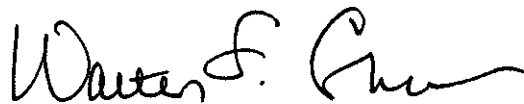
Completion of a specific plan and environmental document will provide a coordinated vision and implementation tools associated with the development of the Lake Merritt BART Station Area and will provide additional tax increment funding to the redevelopment areas as the project is implemented.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that City Council approve the attached resolutions authorizing:

- A contribution of \$265,000 in funds from the Central District Redevelopment Area and Central City East Redevelopment Area to fund the development of the specific plan and environmental document.
- Acceptance and appropriation of \$265,000 in Redevelopment Agency funds and a professional service agreement for design services associated with completion of a specific plan and environmental document for the Lake Merritt BART Station Area.

Respectfully Submitted,

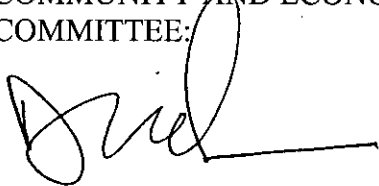


Walter S. Cohen, Director  
Community and Economic Development Agency

Reviewed by:  
Eric Angstadt, Deputy Director

Prepared by:  
Kerry Jo Ricketts-Ferris, Project Manager  
Planning Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMITTEE:



Office of the City/Agency Administrator

**ATTACHMENT A - Professional Services Agreement**  
**ATTACHMENT B - Planning Area Map**

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**PROFESSIONAL SERVICE AGREEMENT  
BETWEEN THE CITY OF OAKLAND  
AND DYETT & BHATIA**

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 \_\_\_\_\_, 2009 between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and Dyett & Bhatia ("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 B** includes the budget and manner of payment. The Project Manager for the City shall be Kerry Jo Ricketts-Ferris.

3. Time of Performance

Contractor's services shall begin on **June 1, 2009**, and shall be completed by **September 30, 2011** in accordance with **Schedule C, Project Schedule**.

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 \$ Nine Hundred Eighty Five Thousand dollars (\$985,000), based upon the scope of services in **Schedule A** and the project 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. 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 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;
- (iii) 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 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 C 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, Office of Contract 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://cces.oaklandnet.com/cceshome/> by clicking on the rightmost upper tab labeled Prompt Payment Ordinance. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Liaison, 510-238-6261, Office of Contract Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

18. 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 September 30, 2011.

19. 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.

20. 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.

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

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local

and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.

- b. Good Faith Effort - In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. Incentives -- Upon satisfying the twenty 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 fifty percent participation of the total contract dollars attributable to local certified firms.
- d. Banking -- The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. 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 City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.
- f. 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 Contract Compliance and Employment Services 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.
- g. 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.
- h. 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.

- i. 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.
- j. 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.

22. 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 \$10.83 with health benefits or \$12.45 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 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 \$1.25 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. 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 and (2) the 2005 Earned Income Tax Outreach Kit <http://www.cbpp.org/eic2008/>
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract 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 Office of the City Administrator, Contract Compliance & Employment Services Division.

23. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 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**.

24. 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**.

25. 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.

26. 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.

27. Religious Prohibition

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

28. 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.

29. 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.

30. 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.

31. Governing Law

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

32. 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)

Project Manager: Kerry Jo Ricketts – Ferris  
(510) 238-3944

City of Oakland  
Community and Economic Development Agency, Planning Division  
250 Frank Ogawa Plaza, Suite 3315  
Oakland, CA 94612-2033  
Attn: Kerry Jo Ricketts-Ferris

(Dyett & Bhatia )

Project Manager: Leslie Gould  
(415) 956-4300

Dyett & Bhatia  
755 Sansome St. Suite 400  
San Francisco, CA 94111  
Attn: Leslie Gould

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.

33. 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.

34. Modification

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



35. 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.

36. Time of the Essence

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

37. 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.

38. Approval

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

39. 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

Dyett & Bhatia

\_\_\_\_\_  
(City Administrator's Office) (Date)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Agency Director's Signature) (Date)

\_\_\_\_\_  
Business Tax Certificate No.

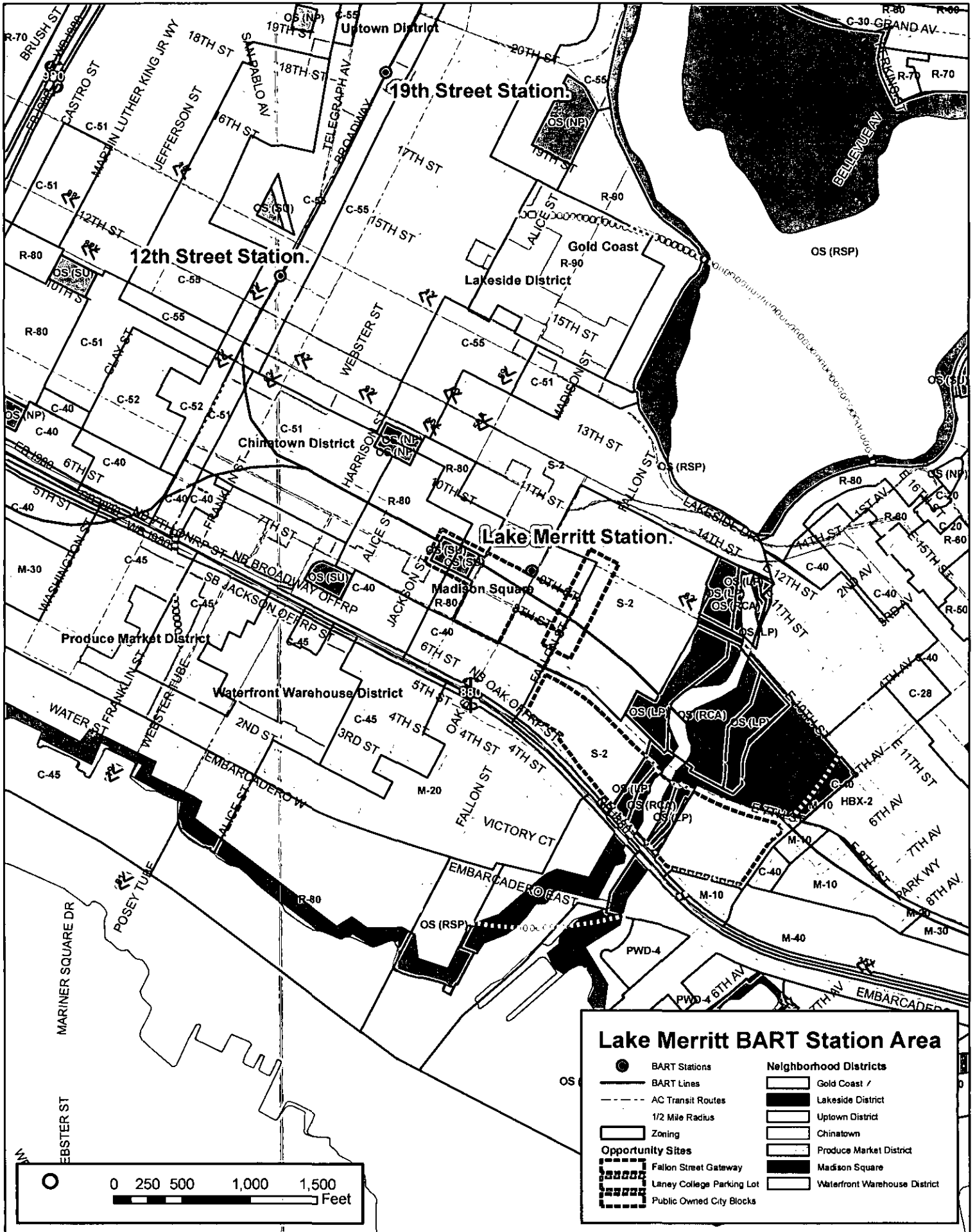
\_\_\_\_\_  
Date of Expiration

Approved as to form and legality:

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

\_\_\_\_\_  
(City Attorney's Office Signature) (Date)

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



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 APR 16 AM 11:02

Approved as to Form and Legality

  
\_\_\_\_\_  
Agency Counsel

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. \_\_\_\_\_ C.M.S.

**AGENCY RESOLUTION AUTHORIZING A CONTRIBUTION OF AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000) FROM THE CENTRAL CITY EAST REDEVELOPMENT PROJECT AND TWO HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000) FROM THE CENTRAL DISTRICT REDEVELOPMENT PROJECT TO THE CITY OF OAKLAND UNDER THE COOPERATION AGREEMENT TO FUND THE DEVELOPMENT OF THE LAKE MERRITT BART STATION AREA PLAN AND ENVIRONMENTAL DOCUMENT**

**WHEREAS**, the Agency wishes to fund the costs for the development of a Lake Merritt BART Station Area Plan by the City of Oakland for the area within a one half mile radius of the Lake Merritt BART station and within the boundaries of the Central District and the Central City East Redevelopment Project Areas, as well as an accompanying environmental document; and

**WHEREAS**, the City and the Agency entered into a Cooperation Agreement on July 1, 2004, which generally governs the provision of assistance and the payment of funds between the two agencies, including Agency financial contributions to City activities in support of redevelopment projects; and

**WHEREAS**, Sections 33020, 33021, 33131 of the California Health and Safety Code authorize a redevelopment agency to prepare plans for the redevelopment of a project area; and

**WHEREAS**, the Lake Merritt BART Station Area Plan will include a comprehensive evaluation of the following topics:

- 1) Overall plan objectives for transit-oriented land use and development, transportation and circulation, and urban design within the study area.
- 2) Site organization including distribution, location and extent of land uses, including open space within the area covered by the plan.
- 3) Regulatory framework for achieving preferred land use model (e.g. zoning and parking amendments, redevelopment authority).
- 4) Urban design goals expressed through form-based design standards and guidelines that integrate existing historical resources in the area.
- 5) Existing and future opportunities for transit-oriented high density housing

- 6) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste, disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
- 7) Standards and criteria by which development will proceed, and standards for the conservation, development and utilization of natural resources, where applicable.
- 8) A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out paragraphs (2), (3), and (4).
- 9) Detailed cost estimates for recommended improvements and a phasing strategy for implementation of required public improvements if full funding is not immediately available.
- 10) Recommendations for building design guidelines in the study area to enhance development opportunities and maintain uniform building and signage appearance.
- 11) Consistency with zoning, general plan and area redevelopment plans.
- 12) Environmental Impact Report (EIR) to satisfy the requirements of CEQA; and

**WHEREAS**, the City Council is consenting to the use of Agency funding for the Lake Merritt BART Station Area Plan and accompanying environmental document; now, therefore, be it

**RESOLVED**: That the Agency hereby allocates and contributes Two Hundred Fifteen Thousand Dollars (\$215,000) from the Central District TAB Series 2005 Fund (9553), Capital Improvement Projects Organization (94800), Parking Garage Development Project (P130610) and Fifty Thousand Dollars (\$50,000) from the Central City East Redevelopment Operations Fund (9540), Capital Improvement Projects, Redevelopment Agency Projects Organization (88699), Miscellaneous Operating Account (52921), Project (S233360) in a City Project to be established for the Lake Merritt BART Station Area Plan Project, to the City under the Cooperation Agreement to fund the Lake Merritt BART Station Area Plan and accompanying environmental document; and be it

**FURTHER RESOLVED**: That the Agency hereby authorizes the Agency Administrator, or his or her designee, to take all actions necessary with respect to the Agency funding in accordance with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
 LaTonda Simmons  
 Secretary, Redevelopment Agency  
 of the City of Oakland, California

Deputy City Attorney

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 APR 16 AM 11:02

# OAKLAND CITY COUNCIL

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

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION ACCEPTING AND APPROPRIATING A CONTRIBUTION OF REDEVELOPMENT AGENCY FUNDS UNDER THE COOPERATION AGREEMENT IN AN AMOUNT NOT TO EXCEED TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$265,000) FOR THE DEVELOPMENT OF THE LAKE MERRITT BART STATION AREA PLAN AND ENVIRONMENTAL DOCUMENT, AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DYETT & BHATIA FOR DEVELOPMENT OF THE LAKE MERRITT BART STATION AREA PLAN IN AN AMOUNT NOT TO EXCEED ONE MILLION EIGHTY-FIVE THOUSAND DOLLARS (\$1,085,000)**

**WHEREAS**, in spring 2006, BART led a community participatory planning and design process to provide a community vision for the Lake Merritt BART Station Area, where focus groups were conducted and a framework for improved streetscape design in the Lake Merritt BART Station Area was developed and incorporated into a Final Summary Report document.; and

**WHEREAS**, in summer 2007, the City and other local governments in the nine-county San Francisco Bay Area were invited to apply for regional designation of an area within their community as a Priority Development Area (PDA) as a part of the FOCUS initiative. PDAs are infill development opportunities within existing communities and are located primarily around transit stations and corridors. Regional agencies will support local governments' commitment to the FOCUS regional development and conservation initiative goals by working to direct existing and future incentives to these priority areas; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC) in partnership with the Association of Bay Area Governments announced the availability of grant funds for the Station Area and FOCUS Planning Grant Program; and

**WHEREAS**, under this program, \$7.5 million dollars was available for planning grants up to \$750,000 for localized planning efforts and associated environmental impact reports, and for specific plan elements to finance planning efforts that will result in land use plans and policies that increase transit ridership around public transit hubs and bus and rail corridors in the nine-county San Francisco Bay Area; and

**WHEREAS,** In February 2008, the City, BART and the Peralta Community College District expressed a desire to enter into a Memorandum of Understanding (“MOU”) to cooperatively pursue development of a Specific Plan for the Lake Merritt BART Station Area (generally defined as a ½-mile radius around the Lake Merritt BART Station) with the understanding that the PCCD and BART have each authorized a contribution of \$50,000 in local match funding towards this effort.

**WHEREAS,** the City Council directed staff to file an application for a Station Area Planning Grant funding to create a specific plan and environmental document for the Lake Merritt BART Station Area Plan; and

**WHEREAS,** the Lake Merritt BART Station Area Plan project was awarded \$720,000 by MTC to assist in the cost of developing a specific plan and environmental document for the planning area; and

**WHEREAS,** the Redevelopment Agency also wishes to fund costs to assist with the development of a specific plan and environmental document for the Lake Merritt BART Station Area in the Central District and Central City East Redevelopment Project Areas; and

**WHEREAS,** the Redevelopment Agency has authorized a contribution of \$265,000 to the City for the development of a specific plan and environmental document for the Lake Merritt BART Station Area; and

**WHEREAS,** the City and the Agency entered into a Cooperation Agreement on July 1, 2004, which generally governs the provision of assistance and the payment of funds between the two agencies, including Agency financial contributions to City activities in support of redevelopment projects; and

**WHEREAS,** the firm of Dhyett & Bhatia was selected through a review of competitive proposals, professional qualifications and negotiations relative to providing a comprehensive fee and Scope of Work within the City’s available budget and authorized Scope of Work for the project; and

**WHEREAS,** the City Council finds that this agreement is for services of a professional nature, the services under this agreement will be temporary, and this agreement shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now therefore be it

**RESOLVED:** That the City Council hereby accepts and appropriates up to \$265,000 in Redevelopment Agency funds for development of a specific plan and environmental document for the Lake Merritt Specific Plan and allocates these monies to the Oakland Redevelopment Agency Projects Fund (7780), Org (88699), (Project No. To Be Determined); and be

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to negotiate and execute a professional services contract and a scope of services, in substantial conformance with Attachments A and B to the City Council Agenda Report, with Dhyett & Bhatia to develop a Specific Plan and accompanying environmental document in an amount for basic services not to exceed Nine Hundred Eighty Five Thousand Dollars (985,000), subject to the review and approval by the Office of the City Attorney; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to exceed the amount for additional services for optional scope items, project contingencies or unforeseen conditions in an amount not to exceed One Hundred Thousand Dollars (\$100,000) for a total not-to-exceed contract amount of One Million Eighty Five Dollars (\$1,085,000); and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to (a) approve any subsequent amendments to or extensions of said agreement, except those involving compensation or the allocation of additional funds, provided that such amendments or extensions shall be reviewed and approved by the Office of the City Attorney and filed with the City Clerk's Office, and (b) to take any other necessary steps to develop the Specific Plan, consistent with the terms of this Resolution; and be it

**FURTHER RESOLVED:** That a copy of the agreement will be on file in the City Clerk's Office.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California