

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 APR 14 PM 1:34

To: Office of the City Manager
Attn: Deborah Edgerly
From: Police Department
Date: April 27, 2004

Re: A Report and Proposed Resolution Authorizing a Professional Services Agreement Between the City of Oakland and Habiba Productions, LLC in an Amount Not to Exceed Seventy-Six Thousand Two Hundred Ninety-Nine Dollars and Forty One Cents (\$76,299.41), for the Production of a Thirty- Second Video Public Service Announcement About Project Safe Neighborhoods / Project Exile for the Period May 1, 2004 through August 15, 2004

SUMMARY

A resolution has been prepared authorizing the City Manager to execute a Professional Services Agreement with Habiba Productions, LLC for production of a thirty second video public service announcement about Project Safe Neighborhoods/Project Exile, in an amount not to exceed \$76,299.41, for the period of May 1, 2004 through August 15, 2004.

FISCAL IMPACT

Funding for this contract, including the 3% contract assessment fee, is provided in the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Project Safe Neighborhoods/Project Exile Grant Fund No. 2112, Organization Code 101111, in Account 54919, Project No. G234310.

KEY ISSUES AND IMPACTS

The Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs, U.S. Department of Justice, supports innovative programs that empower communities to address crime and enhance law enforcement initiatives.

Project Safe Neighborhoods is a comprehensive, strategic approach to reducing gun violence in America.

Project Exile is a collaborative effort among the Oakland Police Department, the Office of the City Administrator, the U.S. Attorney's Office, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the U.S. Department of Justice, the Alameda County District Attorney's Office and the Oakland Metropolitan Chamber of Commerce. Project Exile focuses on reducing the supply

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of guns in the community, apprehending illegal gun dealers, pursuing prosecution options and engaging in a public information campaign to deter criminal possession and use of guns. The Project Safe Neighborhood Task Force for the Northern District of California has identified five (5) target communities in which to focus strategic planning and accountability components in relationship to this U.S. Department of Justice initiative. The target communities are: Oakland, Richmond, San Francisco, San Jose, and Salinas.

As approved by the USDOJ and adopted by the City Council (Resolution No. 77673 C.M.S., March 4, 2003), Project Exile and the "Reducing Gun Violence Initiative: Project Safe Neighborhoods" program, along with the Police Department's other gun control and violence suppression programs, is to initiate a broad-based media campaign. The Police Department's Public Affairs Unit (PAU) is spearheading this Anti-Violence Media Campaign. Utilizing various forms of advertisements, including Public Service Announcements, radio spots, billboard ads, printed materials, and live television presentations, the PAU is reaching a large percent of the public with anti-violence messages.

Assisted by KTOP, the Oakland Government cable channel, the OPD has selected Habiba Productions, LLC to produce a 30-second television Public Service Announcement to highlight the anti-violence campaign. Habiba Productions will deliver two color-corrected BETACAM SP masters with time code to the City's television station. The masters will include all film to tape transfers with synchronous sound. Habiba will deliver all other production elements, including sound, music and/or any required original effects.

SUSTAINABLE OPPORTUNITIES

Economic:

Supplies and equipment used for the project will, whenever possible, be purchased locally.

Environmental:

Promotion of the Project Safe Neighborhood/Project Exile initiative will reduce the level of gun violence within the City of Oakland.

Equity:

Promotion of the Project Safe Neighborhood/Project Exile initiative will enhance crime prevention and facilitate economic growth in the five areas of the Northern District of California reached by these promotions.

DISABILITY AND SENIOR CITIZEN ACCESS

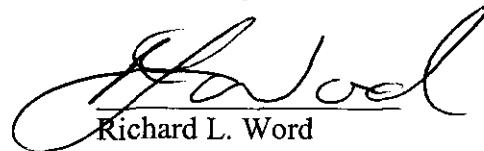
There are no Americans with Disabilities Act (ADA) or senior access issues contained in this report.

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RECOMMENDATION

Recommend approval of the proposed resolution authorizing a Professional Services Agreement with Habiba Productions, LLC, in an amount not to exceed \$76,299.41, for production of a 30-second video public service announcement about Project Safe Neighborhoods/Project Exile, for the period of May 1, 2004 through August 15, 2004.

Respectfully submitted,



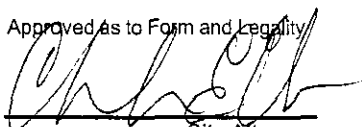
Richard L. Word
Chief of Police

Prepared by:
Catherine McMahon, Manager
Admin & Tech Services Division
Bureau of Services

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Manager

Approved As to Form and Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF OAKLAND AND HABIBA PRODUCTIONS, LLC IN AN AMOUNT NOT TO EXCEED SEVENTY-SIX THOUSAND TWO HUNDRED NINETY-NINE DOLLARS AND FORTY-ONE CENTS (\$76,299.41), FOR THE PRODUCTION OF A THIRTY-SECOND VIDEO PUBLIC SERVICE ANNOUNCEMENT ABOUT PROJECT SAFE NEIGHBORHOODS/ PROJECT EXILE FOR THE PERIOD MAY 1, 2004 THROUGH AUGUST 15, 2004

WHEREAS, the City Council finds that this contract is for services of a professional nature; and

WHEREAS, the City Council finds that services under the contract will be temporary; and

WHEREAS, the Council finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; and

WHEREAS, contracts requiring professional or specialized services are exempt from competitive bidding pursuant to chapter 2.04 of the Oakland Municipal Code; and

WHEREAS, Habiba Productions, LLC is an Oakland based company whose staff is qualified to produce this 30-second video message, and

WHEREAS, budgeted funds, including the 3% contract assessment fee, are available from the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Project Safe Neighborhoods/Project Exile Grant Fund No. 2112, Organization Code 101111, in Account 54919, Project No. G234310; now therefore, be it

RESOLVED: That the City Council hereby finds and determines that services provided pursuant to the contract authorized hereunder are of a professional, scientific or technical nature and are temporary in nature; and be it

FURTHER RESOLVED: That the City Manager is authorized to enter into an agreement with Habiba Productions, LLC for production of a 30-second video Public Service Announcement in an amount not to exceed \$76,299.41, for the period from May 1, 2004 through August 15, 2004; and be it

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FURTHER RESOLVED: That the City Council hereby authorizes the City Manager to execute any further documents necessary to implement this resolution; and be it

FURTHER RESOLVED: That the City Manager is authorized to modify, extend or amend said agreement provided that no additional funds will be allocated without prior Council approval; and be it

FURTHER RESOLVED: That the agreement shall be reviewed by the City Attorney as to form and legality and a copy placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

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PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

SCHEDULE A

CITY OF OAKLAND

CONSULTING AND PROFESSIONAL SERVICES CONTRACTORS SCOPE OF WORK/OUTLINE OF SERVICES TO BE PERFORMED

The services to be performed by Consultant shall consist of services requested by the Project Manager or a designated representative, including (but not limited to) the following:

CONTRACTOR NAME: Habiba Productions, LLC

CONTRACT PERIOD
From: 5/1/04 - 8/15/04

CONTRACT AMOUNT
\$ 76,299.41

Habiba Productions (hereafter known as "Contractor") will provide the following services on behalf of the City of Oakland (hereafter known as "City") for the production of a 30-second video Public Service Announcement about Project Safe Neighborhoods/Project Exile.(hereafter known as "Project"). Contractor understands that such production is a "work for hire" and in no way assumes or retains ownership or copyright to the finished production or any elements used in its creation.

A. SCOPE OF SERVICES

1. Pre-Production: Contractor is responsible for all pre-production activities including but not limited to:
 - A. Meetings with City and its representatives, budget preparation and presentation.
 - B. Recruitment and coordination of all crew and talent
 - C. Identification and scout of shooting locations.
 - D. Coordinate with such producers and creative personnel identified and agreed to by the City for this production.

Contractor will be responsible for all expenses incurred by these and any other activities associated with the production, including any applicable taxes and benefits..

In addition to insurance requirements in Schedule Q, Contractor will provide; equipment rental; faulty equipment and stock; vehicle, and location insurance. Such insurance will be either individual policies or as "producer's package." Applicable Insurance will name the City of Oakland, its employees and representatives held harmless in the event of a

claim. Proof of insurance will be provided to City before execution of contract agreements.

The total budget amount for Pre-Production phase is \$25,037.20

2. **Production:** Contractor will be responsible for all activities associated with the production of the Project including, but not limited to: hiring of above/below the line crew and talent, renting of equipment, transportation, purchase of film/video stock and supplies and any honorariums or location fees associated with the production.

Contractor is responsible for obtaining all talent, product and location releases prior to shooting. Contractor is responsible for any union requirements, federal and state taxes and the City's "Living Wage Ordinance" for both talent and crew are upheld and paid within the budget. Contractor will keep records of any and all expenses associated with the project. Such records will be available to the City upon request.

While Contractor has primary responsibility for executing production, City retains approval of artistic direction of the production and Project, including picture and sound elements.

The total budget amount for Production phase is \$39,125.90

3. **Post Production:** All laboratory activities inherent in the production of said PSA, will be the responsibility of Contractor, including fees associated with processing/developing, transfer of picture and sound, and any color correction to BETACAM SP videostock.
4. **Deliverables:** Contractor will deliver two color-corrected BETACAM SP masters with timecode to City upon completion of lab activities. Masters will include all film to tape transfers with synchronous sound. Contractor will deliver all other production elements, including sound, music and or any original effects. KTOP will be responsible for editing the Project and delivery of the production ensuring that it meets applicable broadcast standards. Contractor will select one representative to work with KTOP staff in editing the Project.
5. KTOP will approve deliverables and be responsible for editing the Project and delivery of the production, ensuring that it meets applicable broadcast standards and Department of Justice (DOJ) Requirements. The Department of Justice requires that one copy of all reports and proposed publications resulting from this agreement be submitted to the DOJ twenty (20) days prior to public release. Any written, visual, or audio publications, with the exception of press releases, whether published at the

grantee's or government's expense, shall contain the following statements:

"This project was supported by Grant No. 2003-GP-CX-0150 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice"

In addition, all such publications must contain the Project Safe Neighborhoods logo unless the recipient is otherwise notified by BJA.

The Project Exile logo will be included as well.

The total budget amount for Contractor's participation in Post-Production phase is \$5,200.00

Habiba Production Fee @ 10% is \$6,936.31

Total Habiba Contract \$76,299.41

CA

**PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND HABIBA PRODUCTIONS, LLC**

Whereas, the City Council has authorized the City Manager 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 May 1, 2004, between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and Habiba Productions, LLC ("Contractor").

2. Scope of Services

Contractor agrees to perform the services specified in **Schedule A** 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 Ashley James.

3. Time of Performance

Contractor's services shall begin on May 1, 2004 and shall be completed by August 15, 2004

4. Compensation and Method of Payment

Contractor will be paid for performance of the entire scope of work set forth in **Schedule A**, an amount not to exceed \$76,299.41. Payment at the **rates** stated in **Schedule A**, shall be due and payable 30 days net of invoice received. The **pre-production invoice** will be paid in advance upon Council approval. The **production invoice** shall be paid 30 days net of invoice received. The **post production services invoice and the 10% production fee** will be paid upon satisfactory completion of the contract. Invoices shall state a description of the **services** completed and the amount due.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be 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.

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.

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. The Contractor shall, upon expiration of 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.

14. 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 matter already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$1,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$1,000 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 \$250 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.

15. 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 preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's 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 preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing 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.

16. Local/Small Business Enterprise Program (L/SLBE)

- a. For contracts exceeding \$15,000, Contractors utilizing subcontractors shall comply with the LBE/SLBE goals or demonstrate compliance with all good faith effort requirements of the City's Professional Services Contract Program. Additionally, opportunities for training and employment shall be given to residents of the City of Oakland.
- b. 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.
- c. 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 Manager 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.
- d. 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.

17. Living Wage Requirements

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code and its implementing regulations if it is for an amount of \$25,000.00 or more, or if it is amended to increase the contract amount by \$25,000.00 in any twelve-month period thereafter. The Ordinance requires among other things, 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, that Contractor 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 \$9.58 with health benefits or \$11.02 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, 2003 rates will be \$9.58 with health benefits and \$11.02 without health benefits: Effective July 1, 2004 rates will be \$9.60 with health benefits and \$11.11 without health benefits)

- 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. Federal Earned Income Credit (EIC) – Contractor shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- 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 Contract Compliance.

18. 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**.

19. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q**. **Schedule Q** is attached hereto and incorporated herein by reference.

20. Indemnification

Contractor shall protect, defend (with counsel acceptable to City), indemnify and hold harmless City, its councilmembers, officers, employees and agents from any and all actions, causes of actions, claims, losses, expenses (including reasonable attorneys' fees and costs) or liability (collectively called "Actions") on account of damage of property or injury to or death of persons arising out of or resulting in any way from work performed in connection with this Agreement by Contractor, its officers, employees, subconsultants or agents.

Contractor acknowledges and agrees that it has an immediate and independent

obligation to defend City, its councilmembers, officers, employees and agents from any claim or Action which potentially falls within this indemnification provision, which obligation shall arise at the time such claim is tendered to Contractor by City and continues at all times thereafter.

All of Contractor's obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

21. 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.

22. Religious Prohibition

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

23. 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.

24. 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 15, 2004.

25. 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.

26. Validity of Contracts

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

27. Governing Law

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

28. 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

Ms. Catherine McMahon

Administrative and Technical Services Division

455 Seventh Street, Room 712

Oakland, CA 94607

Telephone (510) 238-3770

Fax (510) 238-7490

e-mail cmcmahon@oaklandnet.com

(Contractor)

Mr. Oliver Sims

Habiba Productions

505 Chetwood Street #9

Oakland, CA

Telephone (510) 776-6819

Fax: (510) 595-4165

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.

29. 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.

30. Modification

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

31. 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.

32. Time of the Essence

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

33. 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.

34. Approval

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

35. 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

Contractor

(City Manager's Office) (Date)

(Signature) (Date)

(Department Head Signature) (Date)

Business Tax Certificate No.

Approved as to form and legality:

Resolution Number

(City Attorney's Office Signature) (Date)

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PUBLIC SAFETY CMTE.
APR 27 2004