

**CITY OF OAKLAND
SCOPE OF SERVICES/RETENTION AGREEMENT
CONSULTANT/EXPERT**

January 12, 2017

THE PRESS SHOP
2962 Fillmore Street
San Francisco, CA 94123

Re: Agreement to Provide Expert Media Services Related to December 2, 2016
Warehouse Fire

The Press Shop agrees to provide professional services to the City of Oakland in the matter referenced above. In addition to this attachment, all of the conditions in the Professional Services Agreement executed between the City of Oakland and The Press Shop remain valid.

Your staffing of this matter will consist of the individuals listed on this attachment. You agree not to involve, for billing purposes, additional individuals without the prior written consent of either Chief Assistant City Attorney Otis McGee or Chief Assistant City Attorney Doryanna Moreno. You must obtain the City Attorney's or the Chief Assistant City Attorneys' written consent before starting any significant legal research or any other task that is not included in your original scope-of-service outline.

The amount to be paid pursuant to this Agreement shall not to exceed **\$90,000**. All reimbursable expenses must be included in this budget. The maximum that will be paid for the entire scope of service per matter will not exceed the not to exceed amount above, even if the Consultant's/Expert's actual costs per matter exceed the amount referenced above. If the scope of service requires a change, the Office of the City Attorney must approve the changes in writing before they are incurred. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval.

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GENERAL INSTRUCTIONS

Prepare all documentation necessary for this matter in accordance with these instructions. You should promptly inform the City Attorney or the Chief Assistant City Attorneys of major developments and of material issues that may arise while providing consultant/expert services.

The City of Oakland will rely on your advice and expertise as well as any documents prepared by you, to properly protect its interests and to acquire legally enforceable rights.

COMMUNICATION AND WORK PRODUCT

The project manager for this matter is Chief Assistant City Attorney Otis McGee. Except as otherwise noted in this Agreement, direct questions, communications and correspondence to Otis McGee.

BILLING INSTRUCTIONS

Separate bills/invoices are required for each specific matter. Absent an express agreement to the contrary, bills/invoices must be submitted monthly, unless another arrangement is agreed to in advance, or unless the matter is inactive.

All bills/invoices should include hours spent (to nearest fraction), brief description of the services rendered and the individual who provided the services. A summary of the total hours by individual with his/her billing rate should also be included.

All bills/invoices for services and disbursements must conform to the format of the budget per the Scope of Service Agreement, i.e., the bill/invoice must be in a form that will enable the Office of the City Attorney to compare the items that made up the budget with the items that appear on the bill/invoice.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement, the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

OCA will not approve bills/invoices that are in excess of budget, absent prior approval.

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Consultant will bill the City Attorney directly using generalized entries. Consultant understands and agrees that the City's insurance carrier will be responsible to for pay all of Consultant's fees and costs under this Agreement.

SCOPE OF WORK/OUTLINE OF SERVICES

Consultant, a media and strategic communications expert, will report to and assist the City Attorney and at the direction of the City Attorney, will assist the City Attorney in developing media strategies and communications regarding the December 2, 2016 warehouse fire at 1315-31st Avenue, Oakland, California ("Incident"), for the purpose of managing and minimizing the City of Oakland's potential exposure to liability for claims and litigation that may arise out of the Incident:

- (1) Report to the City Attorney with respect to the Consultant's duties and obligations under this Agreement. For the purposes of this Agreement, Consultant shall report to Otis McGee, Chief Assistant City Attorney, or his designee.
- (2) Assist the City Attorney to advise its clients, including without limitation, the Mayor, City Council, City Administrator, department heads and City staff regarding media and communications strategies and media/public communications related to potential and actual claims and litigation, as follows:
 - (a) advise the City Attorney formulate the City's media communications [REDACTED], that are issued by the City Attorney or any of its clients in such a manner as to mitigate the City's exposure to liability; and
 - (b) serve as the City's spokesperson, unless otherwise directed by the City Attorney, with respect to the Incident, and handle all verbal, written and electronic communications with the media and other parties, as identified by the City Attorney; and
 - (c) assist the City Attorney with the development of the City's media communications [REDACTED]; and
 - (d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - (e) draft core messages and supporting documents subject to the review and approval of the City Attorney; and

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- (f) draft, refine and disseminate press materials, statements and talking points subject to the review and approval of the City Attorney.
 - (g) participate and provide advice in key discussions with the City Attorney and its clients; and
 - (h) identify, create and maintain a list of media targets; and
 - (i) conduct media trainings, message workshops and scrimmages as needed for the City Attorney and its clients; and
 - (j) [REDACTED]
[REDACTED]
[REDACTED] and
- (3) Jointly develop with the City Attorney media communications protocols and procedures for (a) general media communications and for (b) legal/litigation communications, including a protocol for fielding incoming request in a structured way.

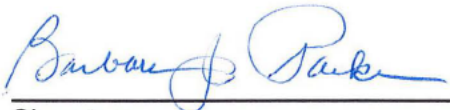
FEES

For work performed, The Press Shop, Inc. will charge a flat fee of \$90,000 based on estimated time expenditure and rates outlined in this chart.

POSITION	HOURS	RATE	COST
Senior Associate	200	\$75	\$15,000
Managing Director	140	\$250	\$35,000
Executive	80	\$500	\$40,000
Total			\$90,000

APPROVAL

City of Oakland
Barbara J. Parker, City Attorney

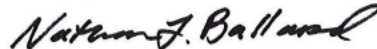


Signature

1/17/2017

Date

The Press Shop



Signature

January 13, 2017

Date

ATTACHMENT 1
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To be attached to signed Agreement

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF OAKLAND
AND
THE PRESS SHOP**

Whereas, the Oakland City Charter authorizes the City Attorney to retain special legal counsel and technical and professional experts and consultants pursuant to Article IV of the Oakland City Charter; and

Whereas, the City Attorney hereby finds that this agreement is for temporary services of a professional nature; and

Whereas, the City Attorney further finds that this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service of the City;

Whereas, the City Attorney wishes to retain Consultant, as a strategic communications expert, to advise the City Attorney on communications and media issues, for the purposes of advancing the interests of the City Attorney's clients (the City Council, City Administrator, and City staff) and the City Attorney's public advocacy, in order to greatly improve the City's ability to achieve a fair and just result; and

Whereas, the City Attorney recognizes that it must take into account the effect of strategic communications work on the City's legal case and the City's exposure to liability; and

Whereas, the City Attorney is retaining the Consultant to help the City Attorney balance the coverage of the issues with hope of reducing the possibility of litigation against the City, to assess and mitigate risks and liability to the City, and help the City Attorney formulate and render legal advice and facilitate the City Attorney's provision of legal support to the City Council, City Administrator, and City staff, and

Whereas, the Consultant wishes to provide media advice to the City Attorney and to engage in frank discussion of facts and strategies with the City Attorney that will assist the City Attorney's ability perform its fundamental client functions such as advising the City Council, City Administrator and City staff of the legal risks of speaking publicly and of the likely legal impact of possible alternative expressions, and zealously seeking vindication and a fair and balanced result on the City's behalf; and

Whereas, the City Attorney's Office provides legal advice to the Oakland City Council which is privileged and confidential and prepares documents which are attorney work-product privileged, all which are not subject to discovery; and

Whereas, the City of Oakland produces, receives and retains attorney-client privileged information and attorney-work product protected information and documents, as well as confidential employee, financial, security, legal and other information, trade secrets and proprietary information that it may be required to withhold from general open disclosure to the public or non-interested parties; and

Whereas, the City wishes to retain the services of Consultant while maintaining confidentiality, the attorney-client and work product privilege, and the non-discoverable nature of such information and documentation; and

Whereas, Consultant acknowledges that it and its officers, partners, employees, subconsultants, subcontractors, agents or representatives ("collectively referred to as "Consultant's representatives") may, in the course of performance of this Agreement, require access to and/or may be exposed to or acquire, information which is attorney-client and attorney work product privileged, or which is proprietary to or confidential to the City or its Councilmembers, employees, officers, directors, agents, or its taxpayers and residents ("Confidential Information" as further defined in Section (6) below).

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of January 12, 2017 between the City of Oakland, a municipal corporation, (hereinafter "City") One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612 and The Press Shop (hereinafter "Consultant").

2. Scope of Services

Consultant agrees to perform the services specified in the Scope of Services/Retention Agreement, which is made a part of this Agreement. A Scope of Services/Retention Agreement is required for each matter and must be approved by the City Attorney. The Scope of Service Agreement(s) for each matter must include a written work plan and a "not to exceed amount." The Scope of Service Agreement(s) for each matter cannot be modified without the written approval of the City Attorney or one of the Chief Assistant City Attorneys. The maximum that will be paid for the entire scope of service per matter will not exceed the not to exceed amount included in the Scope of Service/Retention Agreement, even if the Consultant's actual costs exceed the amount. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement, the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

3. Time of Performance

This agreement is for the fiscal year, beginning January 12, 2017 through June 30, 2017.

4. Compensation and Method of Payment and Payment of Expenses

Consultant will be paid for performance in an amount based on actual costs but that will be "capped" so as not to exceed the amount agreed upon per the Scope of Services/Retention Agreement. Consultant will bill the City Attorney directly for all services rendered using generalized entries. Consultant understands and agrees that the City's insurance carrier will be responsible for paying all of Consultant's fees and costs under this Agreement. The maximum that will be charged for the entire scope of service per matter will not exceed the capped amount, even if the Consultant's actual costs per matter exceed the capped amount. Consultant will be paid after approval of a monthly billing invoice for each matter. The invoice shall include the billing amount, total hours invoiced, total hours per day invoiced, hourly billing rate and the description of services rendered. Consultant will be responsible for all expenses incurred in performing services, which must be approved in advance and included in Attachment 1, Scope of Services Agreement. Any travel that requires an overnight stay or airline transportation must be pre-approved. If an overnight stay is necessary, the City has the right to approve the accommodations, and reimbursement for meals will be at the City's per diem rate. If airline travel is necessary, the City will reimburse at the coach rate.

5. Independent Consultant

a. Rights & Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent Consultant, not an employee of the City. Consultant 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 Consultant in the performance of the services. Consultant shall be solely responsible for all matters relating to the payment of Consultant's employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Consultant's own acts and those of Consultant's subordinates and employees.

b. Consultant's Qualifications

Consultant represents that Consultant 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. Consultant warrants that Consultant and the Consultant's employees and subconsultant are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Consultant's performance of services. All services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Consultant will promptly advise the City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Consultant 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. Consultant has complete and sole discretion for the manner in which the work under this Agreement is performed.

c. Payment of Income Taxes

Consultant is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Consultant for services under this Agreement. On request, Consultant will provide City with proof of timely payment. Consultant agrees to indemnify City for any claims, costs, losses, fees, penalties, interest or damages suffered by City resulting from Consultant's failure to comply with this provision.

d. Non-Exclusive Relationship

Consultant may perform services for, and contract with, as many additional clients, persons or companies as Consultant, in Consultant's sole discretion, sees fit.

e. Tools, Materials and Equipment

Consultant will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of City

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

g. Extra Work

Consultant will do no extra work under this Agreement without first receiving prior written authorization from the City Attorney or the Chief Assistant City Attorneys.

6. Proprietary, Privileged or Confidential Information of the City

Consultant understands and agrees that, in the performance of the services under this Agreement or in contemplation thereof, Consultant may have access to attorney-client, attorney-work product privileged, or private or confidential information that may be owned or controlled by the City and that such information may contain privileged, proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Consultant agrees that all information disclosed by the City to Consultant shall remain in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own privileged, proprietary, or confidential data. The City Attorney and Contractor will develop a Media Communications Protocol which Contractor will strictly comply with including without limitation, with respect to document confidentiality. Contractor and its employees that provide services under this Agreement will be required to execute the NonDisclosure Agreement attached hereto and incorporated herein as Exhibit 1. The City and the Contractor agree that any inadvertent disclosure of such Confidential Information shall not waive attorney-client privilege or attorney work product protections. However, the Contractor understands and agrees that any breach by the Contractor of its obligations hereunder may lead to termination of this Agreement, under Section 18 below and subject the Contractor to the indemnification obligations under Section 15 (a) (v) below and to costs and damages for such breach.

7. Ownership of Results

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

8. Copyright

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

9. Audit

Consultant 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.

Consultant 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 four years following the last fiscal year during which the City paid an invoice to Consultant under this Agreement.

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

10. Agents/Brokers

Consultant warrants that Consultant has not employed or retained any subconsultant, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any subconsultant, 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, 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

Consultant 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 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 Consultant 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 Consultant to assist Consultant in generating publicity for the project funded pursuant to this Agreement. Consultant 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 Consultant from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal property records. Consultant 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. Consultant shall, upon expiration or termination of this Agreement, deliver to the City all of the said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Consultant shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

Consultant 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, Consultant 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, Consultant shall obtain approval by the City Attorney 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 2.4.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Consultant must provide the insurance listed in **Schedule Q** Insurance Requirements. **Schedule Q** which is attached and incorporated here.

15. Indemnification

a) Notwithstanding any other provision of this Agreement, Consultant 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 "Indemnatee") 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 Consultant's obligations, representations or warranties under this Agreement;

- ii) Act or failure to act in the course of performance by Consultant under this Agreement;
 - iii) Negligent or willful acts or omissions in the course of performance of Consultant under this Agreement;
 - iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Consultant;
 - v) Unauthorized use or disclosure by Consultant of Confidential Information as provided in Section 6 Proprietary, Privileged or Confidential Information of the City above; and
 - vi) Claim of infringement of 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 Consultant includes Consultant, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors. City shall give Consultant prompt written notice of any such claim of loss or damage and shall cooperate with Consultant, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- c) Notwithstanding the foregoing, City shall have the right if Consultant fails or refuses to defend City with legal counsel acceptable to City to engage its own legal counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due to Consultant in the amount of anticipated defense costs plus additional reasonable amounts as security for Consultant's obligations under this Section 15. In no event shall Consultant agree to the settlement of any claim described herein without the prior written consent of City.
- d) Consultant acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any such action or claim which potentially falls within the indemnification provision, which obligation shall arise at the same time thereafter, without regard to any alleged or actual contributory negligence of any Indemnatee. Notwithstanding anything to the contrary contained herein, Consultant'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 Indemnatee.
- e) All of Consultant'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.
- f) The indemnity set forth in this Section 15 shall not be limited to by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Consultant 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 of money due or to become due from City shall be subject to deduction or offset by City from any monies due Consultant I by reason of any claim or counterclaim arising out of: (i) this Agreement, or ii) any purchase order, or iii) any other transaction with Consultant.

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, Consultant and its subconsultants or subcontractors shall pay undisputed invoices of their subconsultants or subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless Consultant or its subconsultants or subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between Consultant or its subconsultant and claimant, in which case Consultant or its subconsultant or subcontractors may withhold the disputed amount but shall not pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Department of Contracting and Purchasing upon the filing of a complaint. Consultant of its subconsultants or 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 Consultant or its subconsultant or subcontractors fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the Consultant's next payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withhold directly to claimants for valid claims.

Consultant and its subconsultants or subcontractors shall not be allowed to retain monies from subconsultant or subcontractor payments for goods as project retention, and are required to release subconsultant project retention in proportion to the subconsultant or subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Consultant and its subconsultants or subcontractors shall be required to pass on to and pay subconsultants or 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, Consultant and its subconsultants or 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 Consultant is required to file an affidavit, under penalty of perjury, that he or she has paid all subconsultants or

subcontractors, within five (5) business days following a receipt of payment from the City. The affidavit shall provide the names and address of all subconsultants or subcontractors and the amount paid to each.

If any amount due by Consultant or subconsultant 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 Consultant or subconsultant 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 Consultant or subconsultant 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.

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

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

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email vinman@oaklandnet.com.

18. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving thirty (30) calendar days' written notice to Consultant. Unless otherwise terminated, this Agreement will terminate on date of termination.

19. Conflict of Interest

a. Consultant

The following protections against conflict of interest will be upheld:

i. Consultant 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. Consultant certifies that no member, officer or employee of City or its designees or agents, and no other public official of 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. Consultant 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 Consultant.

iv. Consultant 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. Counsel shall exercise due diligence to ensure that no such official will receive such an interest.

v. Consultant further warrants and represents, to the best of Consultant's present knowledge and excepting any written disclosures as to these matters already made by Consultant 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 Consultant 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 "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 in the previous year. Consultant agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Consultant'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. Consultant understands that in some cases Consultant or persons associated with Consultant 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. Consultant further understands that, as a public

officer or official, Consultant or persons associated with Consultant may be disqualified from future City contracts to the extent that Consultant 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. Consultant shall incorporate or cause to be incorporated into all sub agreements 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 here is intended to, nor waives, 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 and state law, Consultant understands and agrees that, if the City reasonably determines that Consultant has failed to make a good faith effort to avoid an improper conflict of interest or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Consultant to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Consultant is responsible for the conflict of interest situation.

20. Non Discrimination/Equal Employment Practices

Consultant 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, Consultant agrees as follows:

a. Consultant and Consultant's subconsultants or 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 nondiscriminatory policy shall include, but not be limited to 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. Consultant and Consultant's subconsultants or subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of the

Consultant, 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. Consultant 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 American with Disabilities Act**, attached hereto and incorporated herein.

d. If applicable, Consultant will send to each labor union or representative of workers with whom Consultant has a collective bargaining agreement or contract of understanding, a notice advising the labor union or workers' representative of Consultant'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, Small Business Enterprise Program (LSBE)

a. *Requirement* – There is a twenty percent (20%) minimum participation requirement for all professional services contracts \$50,000 or more. Consultant shall comply with the twenty percent local business participation requirement at a rate of ten percent (10%) local and ten percent (10%) small local business participation. The requirement may be satisfied by a certified prime Consultant and/or subconsultant(s) or subcontractor(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland 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 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 Counsel 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. Consultant will have one year to apply credits. A certificate validating banked credits must be issued by the City before 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 Exit Report and Affidavit for, and have it executed by, each L/SLBE subconsultant or subcontractor and submitted to the City Administrator's Department of Contracting and Purchasing along with a copy of the final progress payment application.

f. *Joint Venture and Mentor Protégé Agreements.* If a 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. To earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Department of Contracting and Purchasing 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. Consultant shall submit information concerning the ownership and workforce composition of Consultant's firm as well as its subconsultants, or subcontractors and suppliers, by completing **Schedule D Ownership, Ethnicity and Gender Questionnaire** and **Schedule E Project Consultant Team** attached and incorporated herein and made part of this Agreement.

h. All affirmative action efforts of Consultant are subject to tracking by the City. This information or data shall be used for statistical purposes only. Consultant is required to provide data regarding the make-up of their subconsultants, subcontractors, and agents who will perform City contracts, including the race and gender of each employee and/or Consultant and the job title or function and the methodology used by Consultant to hire and/or contract with the individual or entity in question.

i. In the recruitment of subconsultants or subcontractors, the City of Oakland requires Consultant 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 orientation, 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 subconsultants or subcontractors, the City of Oakland requires Consultant to undertake nondiscriminatory and equal outreach efforts, which includes outreach to minorities and women as well as other segments of Oakland's business community.

22. Living Wage Requirements

If the amount of this Agreement is equal to or greater than \$25,000 annually, then Consultant 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 (Consultant) 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 exemptions apply or a waiver is granted, Consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$12.27 with health benefits or \$14.10 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1st of each year, Consultant shall pay adjusted wage rates.
- b. Health benefits – Full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.75 per hour. Consultant 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 at least 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. The ten uncompensated days off shall be made available, as needed, for a personal or immediate family illness after employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Consultant shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for

advance EIC payments to eligible employees. There are several websites and other sources available to assist with EIC. Websites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit: <http://www.cbpp.org/eic2008>

23. Arizona Purchasing Boycott & Dispute Disclosure

Arizona and Arizona-Based Businesses: Consultant agrees that in accordance with Resolution No. 82727 C.M.S., passed in May, 2010, neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Consultant acknowledges its duty to notify the Department of Contracting and Purchasing, Purchasing Division if its business entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

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

24. 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 that prohibits discrimination in the provision of employee benefits by City contractors and Consultant 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 City contractors and consultants 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 Consultant'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**.

25. 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 City Council approval. The City of Oakland Campaign Reform Act prohibits Consultant who 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, Consultant must sign and date an Acknowledgment of Campaign Contribution Limits Form attached and incorporated here as **Schedule O**.

26. Nuclear Free Zone Disclosure

Counsel represents, pursuant to **Schedule P Nuclear Free Zone Disclosure Form**, that Consultant is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Before execution of this Agreement, Consultant shall complete **Schedule P**, attached hereto.

27. 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.

28. Religious Prohibition

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

29. Business Tax Certificate

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

30. 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 days (30) written notice of abandonment. In the event of abandonment before completion of the final drawings, if applicable, and cost estimates, Consultant 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, Consultant shall present to the City a complete report of the 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 days (30) following submission of a final statement by Consultant.

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

31. Validity of Contracts

This Agreement shall not be binding or of any force or effect until signed by the City Attorney or the City Attorney's designee.

32. Governing Law

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

33. Notices

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
Office of the City Attorney
One Frank Ogawa Plaza 6th Floor
Oakland, CA 94612
(510) 238-3601

CONSULTANT CONTACT:
The Press Shop
2962 Fillmore Street
San Francisco, CA 94123
Attn: Nathan Ballard

34. Entire Agreement of the Parties

This Agreement supersedes all agreements, either oral or written, between the parties with respect to the rendering of services by Consultant 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 is not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

35. Modification

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

36. 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 situations 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.

37. Time of the Essence

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

38. Commencement, Completion and Close Out

It shall be the responsibility of the Consultant 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 Consultant to enable Consultant to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should Consultant 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, Consultant 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 Consultant 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 Consultant.

39. Approval

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

40. 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

Consultant,

Barbara J. Parker
City Attorney


THE PRESS SHOP



Signature

1/17/2017

Date



Signature

January 13, 2017

Date

Pending

City of Oakland
Business Tax Certificate Number