



# GUIDELINES FOR ENVIRONMENTAL CONSULTANT CONTRACTS CONCERNING PRIVATE DEVELOPMENT PROJECTS (2/1/19)

These guidelines are intended for use by City of Oakland staff and the Office of the City Attorney (collectively referred to as the “City”), as well as all environmental consultants when evaluating private development projects under the California Environmental Quality Act (CEQA). These guidelines may be adapted, where appropriate, for use by City staff and environmental consultants when evaluating City-sponsored projects and when evaluating projects under the National Environmental Policy Act (NEPA). These guidelines are intended to apply to all environmental consultants, regardless of contractual relationship (e.g., guidelines apply to a transportation consultant acting as a sub-consultant to a prime consultant (i.e., the preparer of an EIR, Addendum, (M)ND or exemption document) and to a transportation consultant contracting directly with a project sponsor).

## SCOPE OF WORK AND CONTRACT

1. After consultant is selected by applicant, subject to City approval, City must review/comment on draft Scope of Work before it is sent to applicant and City must affirmatively approve (in writing) proposed Scope of Work (including that of sub-consultants) **before** the Scope of Work is finalized. City’s approval of the Scope of Work does not restrict, in any manner, City’s ability to require new or additional information at any time it deems necessary in order to satisfy CEQA and/or City environmental review requirements. Note: This provision does not restrict consultants from providing the draft Scope of Work to applicant as part of applicant’s consultant selection process. The purpose of this provision is to encourage City involvement in drafting (and eventual approval) of the Scope of Work as early in the process as possible.
2. The following standard language/provisions shall be included in every consultant contract with the applicant:

“In accordance with CEQA Section 21082.1(c)(3), environmental documents prepared pursuant to CEQA must reflect the independent judgment of the City of Oakland as the lead agency. The final responsibility for the content and adequacy of the [type of environmental document] lies in the sole discretion of the City of Oakland and its designated representatives. Therefore, [consultant name] will work under the sole direction and control of the City of Oakland.”

“In accepting this matter, Consultant acknowledges and agrees that it will be representing only the City of Oakland and shall be prohibited from representing the applicant or any other interested party without written approval of the Director of Planning and Building and the City’s designated project manager.”

3. Consultant's contract with applicant shall also include language providing for defense, indemnity and hold harmless of City (its councilmembers, agents, officers, employees, public officials) and naming City (its councilmembers, agents, officers, employees, public officials) as additional insured in same manner and to same extent as applicant. If applicant does not require insurance and/or defense/indemnity obligations in contract with consultant, then consultant must maintain insurance acceptable to City with City named as insured.

A final copy of the consultant contract, Scope of Work and Budget, including copies of all amendments and billing summaries, shall be provided to the City. In the event that case planner is an outside contract planner, final contract, Scope of Work, Budget and billing summaries may be provided to contract planner's contact at City in lieu of providing documents to contract planner. Upon City request, actual billings shall be provided to City.

4. City bears absolutely no responsibility/liability for mediating payment disputes between consultant and applicant. The consultant shall notify the City if any payment dispute is affecting consultant's ability to continue work. City generally does not review nor approve consultant invoices to applicant, although City reserves right to do so.
5. The Scope of Work shall incorporate these Guidelines for Environmental Consultant Contracts Concerning Private Development Projects by reference.
6. The Scope of Work shall state that the City is a Third-Party Beneficiary to the environmental review contract between the consultant and the applicant.
7. The City-approved scope of work shall be signed by the applicant and by the City, as the regulatory body and Third Party Beneficiary, and approved as to form by the Office of the City Attorney.

## **GUIDANCE & ENVIRONMENTAL ANALYSIS**

8. The consultant shall contact the City early in the review process for latest templates and guidance documents, including the following:
  - Initial Study Template
  - Thresholds of Significance Guidelines
  - Standard Conditions of Approval
  - Transportation Impact Study Guidelines

Since latest documents may be in process of being updated and may not reflect City's current practice, consultant shall confirm with City staff whether information contained in a guidance document is current.

9. City review of Scope of Work and administrative drafts for transportation-related impacts

and historic resource evaluations involve special procedures and fees. Consultant shall confer with City on latest procedures, which may involve use of a peer reviewer for transportation-related impacts and City staff for historic resource evaluations.

10. Consultant shall be responsible for reviewing recent environmental documents (complete and/or in process) to make certain that approaches, assumptions, methodologies and impact conclusions for project are consistent with other environmental documents. Where appropriate, consultant shall coordinate and discuss such with other consultants working on other environmental documents. Consultant shall contact City case planner to obtain list of other relevant projects.
11. Consultant shall be responsible for reviewing environmental documents prepared for redevelopment plans, general plans, and specific plans to determine if any previously imposed mitigation measures are applicable to the project. Consultant shall contact City case planner to obtain list of such plans and potential mitigation measures.
12. Whenever an Initial Study is produced in advance of an EIR, it must be publicly circulated with a Notice of Preparation. To the maximum practical extent, rather than providing separate technical reports for environmental topic areas (such as a transportation impact report or air quality impact report), the consultant (or sub-consultant) shall cause to be prepared the specific chapter or section of the environmental document. (This avoids preparation, review, and reconciliation of two different documents.) However, detailed data print-outs can and should be compiled separately for inclusion as an appendix to the environmental document. Separate memoranda relating to methodology, assumptions, and approaches may also be required.

## **DOCUMENT MANAGEMENT**

13. City must review and approve administrative drafts of all environmental documents and technical reports (if such technical reports are necessary; see #11 above).
14. Unless expressly agreed upon by both the City and consultant beforehand, the City will only accept complete drafts of environmental review documents for staff review. Partial submittals (e.g., individual topical or technical analyses) will not be accepted or reviewed by City staff in advance of receipt of a single, consolidated draft of the entirety of the documentation required to satisfy compliance with CEQA.
15. All administrative drafts, final documents, and correspondence concerning environmental review shall be submitted directly to the designated City case planner unless otherwise directed by City. Such documents shall not be distributed to any third party, including project applicant.
16. Consultant shall assume at least three administrative drafts plus one screencheck will be required for the following documents (less complex/controversial projects may require fewer than three administrative drafts; extremely complex/controversial projects may

require more than three administrative drafts):

- Initial Studies
- Draft EIRs
- Response to Comments/Final EIRs
- Addenda to Previous Environmental Documents

17. The consultant shall contact the City's designated case planner to determine number of copies of administrative drafts and final documents to be submitted to City. Assume 12 hard copies and one electronic version on DVD/CD (in MS Word format) of each administrative draft will be required. Assume 50 hard copies and ten DVDs/CDs (with document in PDF format) for final documents will be required.
18. Unless otherwise determined by the City, the City will circulate administrative drafts to applicable internal agencies.
19. Consultant shall assume at least three weeks for City review/comment on Administrative Drafts #1 and #2; two weeks for Administrative Draft #3 and any subsequent drafts; and one week for screencheck. For more complicated/controversial projects, additional time should be budgeted.
20. Consultant shall assume City will not submit a uniform set of comments on each administrative draft (i.e., comments may come from different departments/entities within City). It is consultant's responsibility to consolidate and reconcile comments. If City comments are submitted to prime consultant and contain relevant information for other environmental consultants, the prime consultant is responsible for distributing City comments to all other environmental consultants, as appropriate, regardless of contractual relationship between consultants.
21. When submitting revised administrative drafts to City, documents should identify edits in redline (i.e., via underline and strike-out) from previous version. Prime consultant is responsible for ensuring that all previous City comments (both comments intended for prime consultant and comments intended for other environmental consultants) are addressed in the revised administrative draft document submitted to City, regardless of contractual relationship between consultants.
22. Unless otherwise directed by City, consultant will prepare the following notices and companion documents:
  - Request for Water Supply Assessment
  - Notice of Preparation of Draft EIR
  - Notice of Intent to Adopt a (Mitigated) Negative Declaration
  - Notice of Completion
  - Notice of Availability of Draft EIR/Final EIR
  - Standard Conditions of Approval/Mitigation Monitoring and Reporting Program
  - Notice of Determination
  - Documentation and compilation of all public comments

23. Unless otherwise directed by City, consultant shall assume City will publish/circulate all environmental notices and documents, except consultant will be responsible for submitting documents to State Clearinghouse and providing certificate of mailing/delivery to City.
24. Consultant shall maintain all materials referenced in the environmental document and shall promptly provide such materials to City upon City's request.

## **MEETINGS**

25. Consultant shall assume at least the following **three public meetings** (for more complicated/controversial projects or projects requiring City Council action and/or Landmarks Preservation Advisory Board or other advisory body review, additional meetings should be budgeted):
  - Planning Commission Scoping Session (only if EIR required)
  - Hearing on Draft EIR (only if EIR required)
  - Planning Commission decision on environmental document and project
26. For projects requiring an EIR, consultant shall assume **at least** the following **12 additional meetings** with City (for more complicated/controversial projects or projects requiring City Council action and/or Landmarks Preservation Advisory Board review, additional meetings should be budgeted, i.e., weekly or biweekly project review meetings):
  - 1 – Kickoff (discuss overall approach to environmental review process)
  - 1 – Project Scope (after review/comment on draft scope of work)
  - 1 – Meeting after Planning Commission Scoping Session
  - 4 – Meeting for each round of comments on administrative DEIR (total of 4)
  - 1 – After Planning Commission DEIR hearing
  - 4 – Meeting for each round of comments on administrative FEIR (total of 4)

## **CONFIDENTIALITY OF DOCUMENTS**

27. Administrative drafts are considered to be confidential and not to be shared by the consultant with **any** third party, including the applicant.
28. City comments on administrative drafts are considered to be confidential and not to be shared with **any** third party, including the applicant.

## **COMMUNICATIONS**

29. Communications with Applicant: Upon City approval of the Scope of Work, Contractor shall not communicate with applicant without prior written consent of and carbon copy

to the designated City project manager.

30. Communications with City Staff: Consultant shall not communicate with other City staff regarding environmental analysis, unless written consent is provided by the City's project manager.

### **TIMEFRAMES FOR CONDUCTING ENVIRONMENTAL REVIEW**

31. Consultant shall prepare, and revise as requested by the City, a project review schedule for City review and approval.
32. Consultant shall promptly and diligently conduct the required environmental analysis in order to meet the timeframes provided in CEQA and the City's environmental review regulations, or provided in a schedule approved by City. If consultant does not timely produce the environmental document and/or provide information/materials requested by City for whatever reason, City reserves the right to consider project inactive. In accordance with City practice, inactive projects may be considered withdrawn or may be denied on project's merits. Delay in environmental analysis and/or reactivation of an inactive project may affect scope of work of environmental analysis due to changes to circumstances surrounding project/analysis, changes to City procedures, and/or changes to legal requirements.
33. The Oakland Planning Code requires seventeen (17) days' notice for public hearings and City practice is to distribute Response to Comments/Final EIR documents at least ten (10) days before any public hearings.

### **EVENTS OF DEFAULT**

34. Events of Default: Subject to the provisions of these Guidelines, any failure by the Consultant to perform any material term or provision contained herein shall constitute an "Event of Default" of the contract for Scope of Work to which the City is a Third-Party Beneficiary. The City shall provide written notice of default to the Contractor.
35. Remedies. If such default is not cured by the contractor within thirty (30) days following written notice of default from the City, (1) where such default is of a nature that can be cured within such 30-day period; or (2) if such failure is not of a nature which can be cured within such 30-day period, the contractor does not within such 30-day period commence substantial and verifiable efforts to cure such failure, or thereafter does not within reasonable time prosecute to completion with diligence and continuity the curing of such failure, then City reserves the right to use any of the following remedies:
  - Written warning of non-compliance and future remedy;
  - Termination for Convenience and Cause; or
  - Loss of privilege to enter into contract with or for the City for period of up to one year from date of written notice of default.