



## **GUIDELINES FOR ENVIRONMENTAL CONSULTANT CONTRACTS (GECC) CONCERNING PRIVATE DEVELOPMENT PROJECTS (May 2025)**

---

These Guidelines for Environmental Consultant Contracts Concerning Private Development Projects (“Guidelines” or “GECC”) are intended for use by City of Oakland staff and the Office of the City Attorney (the “City”), to direct all environmental consultants when evaluating private development projects under the California Environmental Quality Act (“CEQA”). These Guidelines are intended to apply to all environmental consultants and sub-consultants, regardless of contractual relationship. For example, these Guidelines apply to transportation consultants, noise consultants, and other specialized consultants acting as a sub-consultant to a prime consultant (hereinafter, “Consultant”, which is the primary preparer of the CEQA document). The City may also use these Guidelines when evaluating City-sponsored or private development projects requiring review under CEQA and/or the National Environmental Policy Act (“NEPA”).

### **SCOPE OF WORK AND CONTRACT**

1. After the applicant selects Consultant, subject to City approval, Consultant shall prepare a Scope of Work (“SOW”) for City and applicant review. The City shall first review and comment on the draft SOW before applicant review. The City’s approval of the SOW does not restrict the City’s ability to require new or additional information whenever it deems necessary to satisfy the requirements of CEQA and/or City environmental review procedures.

**Note:** This provision does not restrict Consultant from providing the draft SOW to the applicant as part of applicant’s Consultant selection process. The purpose of this provision is to ensure City involvement in drafting (and approval of) the final SOW as early in the process as possible. It is not meant to restrict the applicant’s participation in the formulation of the SOW.

2. Every Consultant contract with the applicant shall include the following standard language/provisions, which the City may amend in its discretion:

“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] is within the sole discretion of the City of Oakland and its designated representatives. Therefore, [Consultant name] will work under the technical direction of the City of Oakland. Consultant shall submit all work products

for review to the City in accordance with the SOW. The provision for technical direction notwithstanding, the City of Oakland shall not be party to the negotiation of fees or the assignment of the monetary value for tasks under the SOW, which shall be set by agreement between the applicant and Consultant.”

“In accepting this matter, Consultant acknowledges and agrees that it will be representing only the City of Oakland with regards to the project considered in the SOW and shall be prohibited from representing the applicant or any other interested party in the context of the project.”

3. The SOW shall also include language requiring for the defense, indemnity and the holding harmless of the City (including, but not limited to the Mayor, councilmembers, agents, officers, employees, public officials) and naming City (the Mayor, councilmembers, agents, officers, employees, public officials) as additional insured in the same manner and to same extent as the applicant.
4. The SOW shall incorporate the GECC by reference.
5. The SOW shall state that the City is a party to the SOW between Consultant and the applicant.
6. The SOW shall be signed by the applicant, Consultant and the City, and shall be approved as to form and legality by the Office of the City Attorney.
7. In the event that the City’s assigned project manager is retained from an outside firm, then the final SOW shall be provided to the contract planner’s manager at the City and to the assigned City Attorney (if any), with contract planner carbon-copied.
8. Within thirty (30) days of execution of the SOW and Consultant budget, and of any and all modifications thereof, the City’s designated project manager will issue invoices to the applicant for payment reflecting any fees and/or incremental changes to the City’s environmental review fee to be calculated based on the adopted Master Fee Schedule. Applicant shall make timely payment, or environmental review will be put on hold until payment is received.

## **GUIDANCE & ENVIRONMENTAL ANALYSIS**

9. Prior to beginning work under the SOW, the Consultant shall obtain current versions of templates and environmental guidance documents from the City’s project manager, including the following:
  - Initial Study Template
  - Thresholds of Significance Guidelines
  - Standard Conditions of Approval

➤ Transportation Impact Review Guidelines (the “TIRG”)

10. Consultant shall be responsible for reviewing recent environmental guidance documents (complete and/or in process) to make certain that approaches, assumptions, methodologies and impact conclusions for the project are consistent with other City environmental documents. Where appropriate, Consultant shall coordinate and discuss with other consultants working on other environmental documents. Consultant shall contact City project manager to obtain list of other relevant projects and documents to review.
11. Consultant shall be responsible for reviewing environmental documents prepared for redevelopment plans, General Plan elements, and specific plans to determine if any previously imposed mitigation measures are applicable to the project and/or the documents provide a tiering opportunity for the project. Consultant shall contact the City project manager to obtain list of such plans, CEQA documents, and mitigation measures.
12. To the maximum extent practical, rather than providing separate technical reports for environmental topic areas (such as a transportation impact report or air quality impact report), Consultant (or sub-consultant) shall prepare the specific chapter or section of the environmental document to address the respective topic area (this avoids preparation, review, and reconciliation of two different documents). However, detailed data documents can and should be compiled separately for inclusion as an appendix to the environmental document with appropriate references to the appendix in the main body of the environmental document. Separate memoranda relating to methodology, assumptions, and approaches may also be appropriate.

## **DOCUMENT MANAGEMENT**

13. After consultation with the applicant, Consultant shall draft, then confirm the content of the Project Description with the City; City will communicate changes to the Project Description to the Consultant within fourteen (14) calendar days of receipt from the applicant.
14. City must review and approve administrative drafts of all environmental documents and technical reports (if such technical reports are necessary; see #12 above).
15. 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; and partial submittals (e.g., individual topical or technical analyses or chapters) will not be accepted or reviewed by City staff in advance of receipt of a single, consolidated draft of the entirety of the CEQA document.
16. All administrative drafts, final documents, and correspondence concerning environmental review shall be submitted directly to the designated City project manager unless otherwise directed by the project manager. Such documents shall not be distributed to any third party, including the project applicant, without the City project manager’s prior written consent.
17. Consultant shall assume that two administrative drafts and one screencheck draft will be

required for draft environmental documents, such as the following:

- Initial Studies
- Draft EIRs
- Response to Comments/Final EIRs
- Addenda to Previous Environmental Documents
- Other technical reports, such as traffic studies

More complex/controversial projects may require more than two administrative drafts (examples that may require more than two administrative drafts include, but are not limited to: revisions to technical reports as part of responses to the first administrative draft, comments from outside divisions or agencies that are allowed to review and comment on an administrative draft, and revisions in the second (2<sup>nd</sup>) administrative draft that are not fully responsive to City comments on the first (1<sup>st</sup>) administrative draft).

18. Consultant shall contact the City's designated project manager to determine the number of copies of administrative drafts and final documents to be submitted to the City. Consultant shall assume provision of one electronic version in both MS Word and .pdf format of each administrative draft, one consolidated .pdf format document for final publication documents, and six (6) hard copies of the final publication document for each applicable public hearing.
19. Unless otherwise determined by the City, the City will circulate administrative drafts to applicable internal agencies.
20. Consultant shall assume three (3) weeks for City review/comment on administrative drafts #1 and #2; two (2) weeks for any subsequent administrative drafts directed by the City's project manager; and one (1) week review time for the screencheck draft. For more complicated/controversial projects, the City and Consultant may need to budget additional time through the SOW.
21. Consultant shall assume City staff will submit separate drafts of comments on each administrative draft (i.e., comments may come from different departments/entities within the City). It is Consultant's responsibility to consolidate and reconcile comments. If the City comments are submitted to Consultant and contain relevant information for other environmental consultants, the Consultant is responsible for distributing City comments to all subconsultants and any other consultants contributing to environmental review.
22. When submitting to the City any revised administrative drafts and all iterative documents under review, the Consultant must identify edits in redline (i.e., via underline for added text and strike-out for deleted text) from previous versions. Consultant is responsible for ensuring that all previous City comments (both comments intended for the Consultant and comments intended for other environmental consultants) are resolved in the revised administrative draft document submitted to the City, regardless of contractual relationship between consultants and shall provide to the City a confirming document that tracks these comments from origin to reconciliation.

23. Unless the City otherwise directs Consultant, Consultant will prepare the following notices and CEQA-related documents:
- AB-52 and SB-18 Tribal Consultation Outreach
  - 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
  - CEQA Findings
  - Documentation and compilation of all public comments
24. Unless the City otherwise instructs Consultant, Consultant shall be responsible for conducting noticing, including and not limited to: (1) submitting documents to State Clearinghouse and CEQAnet; (2) providing the certificate(s) of mailing/delivery to all interested parties, including the applicant, interested agencies, the Native American tribes (where applicable), and individuals who have either requested notice or are statutorily required to receive notice; and (3) where necessary, preparing and submitting Notices of Exemptions (“NOEs”) or Notices of Determinations (“NODs”), although the submittal to the County Clerk/Recorder will most often be the responsibility of the applicant as set forth in City direction it will provide within project approval letters. City shall provide Consultant with current agency, tribal, and interested party mailing lists so that Consultant may fulfill the specific noticing requirements.
25. Consultant shall maintain in their files all materials referenced in the environmental document and shall promptly provide such materials to City upon City’s request.

## **MEETINGS<sup>1</sup>**

26. Consultant shall assume at least **three public meetings**. For more complicated/controversial projects or projects requiring City Council action and/or Landmarks Preservation Advisory Board (“LPAB”), Parks and Recreation Advisory Commission (“PRAC”), or other advisory body review, Consultant shall submit a budget for additional meetings for City’s review and approval.

The three standard meetings shall be:

---

<sup>1</sup> Please note that residential projects are subject to the State-mandated “five hearing rule” under Government Code section 65905.5, or more commonly referred to as Senate Bill (“SB”) 330. If a residential project may require more than five (5) hearings, this will require analysis and specific direction from the City Attorney’s Office.

- Planning Commission Scoping Session (only if EIR required)
  - Hearing on Draft EIR (only if EIR required)
  - Planning Commission decision on environmental document and project (if not an administrative approval)
27. For projects requiring an EIR (or addendum to EIR, at the discretion of the City), Consultant shall assume **at least** the following **additional meetings** with City staff (for more complicated/controversial projects or projects requiring City Council action and/or LPAB or PRAC review, additional meetings should be budgeted, i.e., weekly or biweekly project review meetings):
- One kickoff meeting (discuss overall approach to environmental review process) (includes applicant)
  - One project scope meeting (after review/comment on draft SOW) (includes applicant)
  - One meeting after Planning Commission Scoping Session
  - One meeting prior to submittal of first (1<sup>st</sup>) administrative draft of the Draft EIR to discuss initial findings after completion of technical analyses. Dependent upon the outcome of the initial findings, an additional follow-up meeting may be necessary to include the applicant as directed by City Staff in instances where the analysis could require changes to the project description, scope modifications, or other details significant to the analysis.
  - One meeting for each round of comments on administrative Draft EIR (total of 2 to 3) (may include applicant, at City's discretion)
  - One meeting after Planning Commission Draft EIR hearing (may include applicant, at City's discretion)
  - One meeting for each round of comments on administrative Final EIR (total of 2 to 3) (may include applicant, at City's discretion)

## **CONFIDENTIALITY OF DOCUMENTS / COMMUNICATIONS**

28. Administrative drafts and City comments on administrative drafts are confidential. The Consultant shall not share them with any third (3<sup>rd</sup>) party, including the applicant. At its discretion, the City may direct Consultant to share an administrative draft (a specific section or in its entirety) with outside agencies or the applicant for comment prior to publishing the document. Any such shared administrative draft shall be a clean copy and not contain any Consultant or City redlines or comments.
29. Upon City approval of the SOW, Consultant may communicate with the applicant; however, City project manager provides all direction to Consultant regarding the SOW, as well as the status and content of scoped work products, because the analysis and findings must reflect the independent judgement of the City in accordance with CEQA. Consultant shall copy the City project manager on all written communications related to the SOW, which will then become part of the public record. If Consultant receives direction from the applicant, Consultant shall immediately notify the City to determine the appropriate course of action, which may include a live meeting between Consultant, applicant and City to determine whether applicant's

substantive or procedural input is appropriate.

30. Consultant shall not communicate with City staff other than the City's project manager regarding environmental analysis, unless written consent is provided by the City's project manager. The exception is that Consultant may communicate with the City's project manager's supervisor(s), as needed.

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

31. Consultant shall prepare a project schedule as part of SOW, including review milestones, for City review and approval.
32. Consultant shall abide by the project schedule. Any delays and reason(s) for said delays shall be communicated to both the City project manager and applicant as soon as Consultant is aware of the delay. Such delay may constitute an act of default subject to City remedies, as described below in this GECC.
33. Consultant shall promptly and diligently conduct the required environmental analysis in order to meet the schedule provided in the approved SOW. If Consultant does not produce the environmental document and/or provide information/materials requested by City in accordance with the schedule for whatever reason, the City shall promptly alert the applicant to the delay. Delays may affect the SOW due to changes to circumstances surrounding the project, changes to City procedures, and/or changes to legal requirements.
34. The Oakland Planning Code requires seventeen (17) days' notice for public hearings. Government Code section 65854 now requires twenty (20) days' notice of public hearings prior to a Planning Commission meeting where rezoning and text amendments impact real property rights. The City's practice is to distribute environmental documents at the time of public hearing notice. As such, Consultant shall provide final Response to Comments/Final EIR document to the City in advance of required noticing, whether the notice date is seventeen (17) days or twenty (20) days prior to the meeting.

### **DEFAULT & REMEDIES**

35. Events of Default: Subject to the provisions of these Guidelines, any failure by the Consultant to perform any material term or provision contained herein or within the SOW for the project shall constitute an "Event of Default" under the SOW to which the City is a party. The City shall provide written notice of default to Consultant and applicant. Examples of default include, but are not limited to:
  - Failure to address City comments on and edits to administrative draft documents;
  - Failure to meet timeframes established in approved SOW for Consultant-directed deliverables, or to timely inform City's project manager of any foreseeable Consultant delays in writing;
  - Failure to attend scoped public hearings;



- Disrespectful and/or offensive behavior; and
  - Communications without the City's written consent, as addressed in these Guidelines.
36. Remedies: If such default is not cured or otherwise addressed to the City's satisfaction by Consultant within thirty (30) days following written notice of default from the City where such default is of a nature that can be cured or addressed within such 30-day period; or where such default is not of a nature which can be cured or addressed within such 30-day period and Consultant does not within such 30-day period commence substantial and verifiable efforts to cure or address such default, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such default, then City reserves the right to use any of the following remedies as provided in writing to Consultant, and to inform the applicant of any remedial action related to the subject SOW:
- Warning of non-compliance and future remedy;
  - Termination for Convenience and Cause;
  - Loss of privilege to enter into contract with or for the City for a period of time determined by the City; or
  - Any other remedies available to the City as a matter of law.
37. City bears no responsibility/liability for mediating payment disputes between Consultant and applicant. Consultant shall notify the City if any payment dispute affects Consultant's ability to continue work. City generally does not review or approve Consultant invoices due to be paid by applicant or their agent, although City reserves the right to review them if necessary to ascertain work performed by Consultant.