
**CITY OF SACRAMENTO
REQUEST FOR PROPSALS (RFP)
FOR REAL ESTATE BROKERAGE SERVICES**

Issued Friday, May 28, 2010

**RFP Submittal Deadline
Friday, June 18, 2010 at 4:00 p.m.**



Submit to:

**Economic Development Department
City Hall
915 I Street, Third Floor
Sacramento, CA 95814
Attn: Melissa Anguiano**

Real Estate Brokerage Services RFP

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Real Estate Brokerage Services RFP

REQUEST FOR PROPOSALS

I. INTRODUCTION

The purpose of this Request for Proposal (RFP) is to select a qualified Real Estate Brokerage firm to provide professional services related to real property assets owned by the City of Sacramento.

The selected firm will be responsible for assisting the City's asset management and economic development staff with brokerage services which may include: (i) providing advice regarding property valuation, (ii) portfolio organization and analysis, (iii) strategic planning for property leasing and disposal, (iv) listing services for sale of City surplus property, and (v) overseeing escrow for such sales. The deliverables may include valuation, marketing and strategic planning reports as specified in each task order that may be issued during the term of the agreement.

The City is looking for a firm with experience in marketing, leasing and selling properties for owners with large portfolios of properties. The brokers of the firm to be assigned to this contract should have some familiarity with laws and practices applicable to public agency real estate matters.

A. PROPOSAL

Qualified real estate brokerage firms are invited to submit proposals to provide professional Real Estate Brokerage services for City real property assets. Firms responding to this RFP shall submit:

- Seven (7) bound copies of the proposal
- One (1) unbound reproducible copy
- One (1) electronic PDF copy

Proposals must be submitted by no later than **4:00 P.M.** on **Friday, June 18, 2010** to:

**Economic Development Department
City Hall
915 I Street, Third Floor
Sacramento, CA 95814
Attn: Melissa Anguiano**

Please refer to "*Attachment B - Proposal Submittal Requirements*" for additional information regarding proposal requirements. Refer to "*Attachment C - General*

Information” for specific details about the consultant selection process and other City of Sacramento submission process requirements.

It is solely the responsibility of the proposers to ensure that proposals are received at the location noted above by the deadline. ***Please allow sufficient time to check-in with building security when hand-delivering proposals.***

Technical questions regarding this RFP shall be directed, by **Monday, June 14, 2010 IN WRITING ONLY** to:

**Economic Development Department
Attn: Melissa Anguiano
915 I Street, Third Floor
Sacramento, CA 95814**

Questions may also be faxed to (916) 808-8161 or sent by e-mail to manguiano@cityofsacramento.org. Questions via phone will not be responded to.

All questions and answers will be posted on the City’s website at www.cityofsacramento.org/econdev under the “News” section.

Right to Reject All Proposals: The City reserves the right to reject all proposals and to waive minor irregularities in any proposal. The proposer is solely responsible for the costs of preparing and submitting a proposal in response to this RFP, and the City will not reimburse or pay the proposer those costs.

Non- Discrimination: By submitting a proposal, the proposer represents that it and its affiliates and subsidiaries do not and will not discriminate against any employees or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age, or medical condition.

B. TENTATIVE CONSULTANT SELECTION SCHEDULE

Release Request for Proposals	May 28, 2010
Proposal Submittal Deadline	June 18, 2010
Interviews	June 28/29, 2010
Complete Negotiations with Top Ranked Firm	July 9, 2010
City Council Approval of Contract	July 20/27, 2010

II. BACKGROUND

The City of Sacramento, General Services Department Asset Management Section, oversees a portfolio of approximately 2,000 parcels, many of which are used for City

operations and services. The City's Asset Management Section is charged with acquisition, disposition and management of City-owned or controlled property, which includes properties subject to an easement, lease or license.

In an effort to efficiently manage the City's real estate assets and to generate revenue through disposition or lease of surplus property, the City is interested in initially developing a strategic plan that inventories all City-owned vacant surplus and/or controlled property, its current use, and outlines recommendations for disposing or leasing surplus real property. The Asset Management Section will provide the firm a list of its real property inventory; however, due to the length of time since acquisition and the number of properties in the portfolio, records for all of the properties are not readily available or may not exist. The selected firm would identify which surplus properties have the most potential to generate revenue, through sale or leasing, the proposed timing to bring the properties to market, and the proposed marketing strategies and costs. If the City Council approves the proposed disposition or lease of the various surplus properties, the City would then enter into a listing agreement with the selected firm based on the rates set out in the proposal.

City Code section 3.88 provides that the sale of surplus City property is to be sold to the highest bidder unless the City Council makes a finding that waiver of the bidding process is in the best interests of the City. For each property recommended to be sold, the brokerage firm shall identify which sale process would likely result in the highest offer.

III. SCOPE OF SERVICES

Listed below are tasks / issues the consultant is expected to incorporate in the proposed scope of services. It is not intended that the tasks listed below comprise a comprehensive list, or are the only tasks required for this project. Each consultant firm should, based on its expertise, develop a comprehensive and detailed scope of services necessary to complete the deliverables listed in this section of the RFP.

A. Project Management

The consultant shall be responsible for project management activities throughout the life of the project.

- The consultant will carry out the scope of this project under the direction and control of the City.
- Although there will be continuous liaison with the city, the consultant will be expected to meet monthly at a minimum with the City for the purpose of reviewing progress and providing necessary guidance to the consultant in resolving any issues that may arise.
- The consultant will provide brief written monthly summaries of the progress, which should outline the work accomplished during the reporting

period; work to be accomplished in subsequent reporting periods; issues, real or anticipated; and notification of any significant deviation from previously agreed-upon work plans.

- Setup and facilitation of meetings, field reviews, and other project related meetings. Consultant shall prepare all meeting materials.
- The consultant shall provide the City Project Manager a copy of all material to be used in public presentations as well as any meetings prior to such meetings taking place.
- The consultant shall be available to attend and potentially present at City Council meetings.
- The City Project Manager should be kept abreast of all coordination with outside agencies / stakeholders, prior to any meeting with such outside agency or organization / group.

B. Strategic Real Estate Plan

Upon award of the contract the consultant will be responsible for developing initiatives to achieve the City's strategic real estate planning goals.

- The consultant shall evaluate City-owned vacant and/or underutilized land; and as a result provide an assessment of revenue potential and recommendations and planning for expedited/streamlined disposition of that City-owned land.
- The consultant is expected to produce a draft strategic plan report, including a recommendation section for City review, by no later than one hundred and twenty (120) days after the commencement of the contract. The report should summarize the costs and potential revenue associated with the sale of each property; state goals as they relate to the City; identify properties which present an opportunity as they are determined to be underutilized or surplus to City needs and present a specific plan of action to meet the City's goals of revenue generation. The final report will reflect City comments and be produced within one hundred and eighty (180) days of commencement of the contract. Recommendations made by the consultant, at any time during the creation of the strategic plan, may be brought to the City and, if approved, be assigned as a project. Such projects should be identified within, and will count toward, the fulfillment of the goals of the strategic plan.
- The consultant will also identify best practices related to public sector real estate portfolio management that would be beneficial to the City in the on-going management of its real estate assets.

C. Identification, Utilization and Disposal of Surplus Property

- The consultant will need to provide a report of all identified City-owned surplus and under-utilized sites that offer excess site area available to dispose of or lease.
- The consultant shall prioritize opportunities for utilization or disposal, identifying which have the greatest opportunity to maximize revenue to the City in the shortest period of time.

D. Represent City in Disposal of Real Property

The consultant will represent the City, as may be requested and authorized, during the sale transaction of surplus property.

- Representation may include, but is not limited to, preparation and review of bid documents, advertisement and marketing of the properties for sale, communication with prospective bidders, and communication with selected bidder. Specific tasks may be unique to each property, and the sale process will be determined according to the approved strategic plan.

E. Other Services

Other real estate related professional services may be requested from time-to-time as a result of and in conjunction with this contract.

IV. FEE PROPOSAL

THIS IS A NO COST CONTRACT. In all matters concerning this contract, compensation for work performed shall be performance based. Specifically, compensation shall be derived from the sales or lease transaction proceeds. Proposals for other methods of compensation may be submitted for consideration. However, the City intends to award a no cost contract.

- All fees/rates quoted in response to this RFP will be firm for the duration of the Contract. No increase in fees will be permitted.
- Indicate specific services to be provided to the City at no cost to the City or based on payment as part of the transaction (both lease, vacant and/or underutilized property brokerage fee rates).
- In all matters concerning the awarded contract, the Consultant's sole and absolute loyalty and fiduciary duty will be to the City of Sacramento.

Attachment A

PROPOSAL SUBMITTAL REQUIREMENTS

INTRODUCTION

These guidelines were developed to standardize the preparation of proposals by consultants for professional services. The purpose of these guidelines is to help assure consistency in format and content of proposals that are prepared by consultants and submitted to the City. This process will reduce the time required for the consultant to prepare a proposal and will simplify the review process by City staff.

The proposal should contain the following information:

1. Introductory Letter
2. Office Location at which Work will be Performed
3. Qualifications and Experience of Project Manager and Team
4. Work Plan
5. Project Schedule
6. Supportive Information
7. References (at least 3 for Proposing Firm)
8. Conflict of Interest Statement
9. Insurance Coverage
10. Fee Proposals

RECOMMENDED DETAIL

Note: All references to the maximum number of pages are to be single sided pages. A twenty five (25) page maximum is highly encouraged for items 1 through 7 above. The recommended page limit does not apply to items 8 through 10 above.

1. Introductory Letter:
This letter should be addressed to:

***City of Sacramento
Economic Development Department
915 I Street, Third Floor
Sacramento, CA 95814
Attn: Melissa Anguiano***

Indicate the name of the firm submitting the proposal, its mailing address, telephone number, and the name of an individual to contact if further information is desired. This letter should reflect the consultant's project understanding and summarize critical issues, challenges, milestone tasks and appropriate resourcing. This should be based on existing information available in the Request for Proposal, from a site visit, available

documents, and from applicable regulations or requirements. This letter should also contain an expression of the consultant's interest in the work, a brief summary statement regarding the qualifications of the consultant to do the work, and a brief summary of any information about the project team or the consultant that may be useful or informative to the City.

NOTE: Along with the introductory letter, the consultant should indicate his/her acceptability of the terms and conditions of the standard consultant services agreement contained in Appendix E "Sample Contract Agreement." Any proposed deviations and modifications to the agreement should be noted, with reasons given, in the introductory letter for review by the City. The City will not consider changes to the agreement once the selection process has been completed.

2. Office Location at Which Work will be performed:
Identify the office location or locations where the consultant will accomplish the work.
3. Qualifications and Experience of Project Manager and Team:

An organization chart for proposed team must be included.

Describe how the consultant team will be organized. Discuss the qualifications and experience of the consultant firm, project manager and project team on similar projects. Specific experience with City, state and federal projects and procedures should also be included.

NOTE: The City must approve any change in key personnel after the award of a project before the change is made.

4. Work Plan:
Identify key personnel that will be made available to this project and define their level of project involvement and time commitment. Describe the responsibilities of key team members and explain how they will interact with respect to delivery of critical tasks. The work plan will ultimately become part of the contract by reference to the proposal. It should describe and define in a specific, concise and straightforward manner the proposed approach to achieving the objectives and accomplishing the tasks described in this Request for Proposal. The consultant's internal control for ensuring communication with City staff is adequate and timely, and submittals are complete and on time should also be discussed.

5. Project Schedule:

The prospective Consultant shall prepare a schedule that is both adequate and reasonable to ensure timely completion of the tasks listed in the Scope of Services.

NOTE: The Consultant's schedule should allow for a City review period of three weeks for each project deliverable.

6. Supportive Information:

Supportive information may include graphs, charts, photos, resumes, references, etc., and is to the consultant's complete discretion.

7. References:

This section should describe work which is similar in scope and complexity to the project and which the Consultant team has undertaken in the last five years. A discussion of the challenges faced and solutions developed by the team is highly recommended. The section shall also include a summary table showing the following information:

- Name of related project, and date services were provided
- Names of Consultant's project manager and key team personnel
- Scope of the Consultant team's assignment on the project
- Name, Address, and current phone number of the client's Project Manager

NOTE: A minimum of three references are required. Each reference will be contacted by City staff. References with incorrect contact information will not count toward the required minimum.

8. Conflict of Interest Statement:

The prospective Consultant shall disclose any financial, business or other relationship with the City that may have an impact upon the outcome of this contract. The prospective Consultant shall also list current clients who may have a financial interest in the outcome of this contract. In particular, the prospective Consultant shall disclose any financial interest or relationship with any company that might submit a bid on the City property sale.

- A. Generally. Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the City are required to comply with the City's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals working for

contractors providing services or performing work for the City, if such individuals are considered to be “consultants” under the Political Reform Act. The term “consultant” generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not “consultants.”

The City’s Conflict of Interest Code requires individuals who qualify as “consultants” to file the following statements of economic interests with the City:

- (1.) An “assuming office” statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2.) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3.) A “leaving office” statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The City’s Conflict of Interest Code also requires individuals who qualify as “consultants” under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. Conflict of Interest Statements. The standard agreement attached to this RFP indicates whether or not the individual(s) who will provide services or perform work pursuant to the agreement will be considered “consultants” within the meaning of the Political Reform Act and the City’s Conflict of Interest Code. The submission of a proposal in response to this RFP constitutes the proposer’s acknowledgement and agreement that, if the proposer is awarded the agreement by City, the individuals who will provide services or perform work pursuant to the agreement will not have a conflict of interest under the City’s Conflict of Interest Code.

In addition, if the proposer is awarded the agreement by City, such proposer shall cause the following to occur within 30 days after execution of the agreement:

- (1.) The proposer shall identify the individuals who will provide services or perform work under the agreement as “consultants”

within the meaning of the Political Reform Act and the City's Conflict of Interest Code;

(2.) The proposer shall cause these individuals to file with the City Representative identified in the agreement the "assuming office" statements of economic interests required by the City's Conflict of Interest Code.

(3.) Thereafter, throughout the term of the agreement, the proposer shall cause these individuals to file with the City Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code. The City may withhold all, or a portion of any, payments due under the agreement until all required statements are filed.

9. Insurance Coverage:

The prospective Consultant shall provide a summary of the firm's insurance coverage for Comprehensive General Liability Insurance, Automotive Liability Insurance, and Worker's Compensation Insurance.

For additional information regarding insurance requirements, see Attachment C, "General Information," of this RFP.

10. Fee Analysis:

THIS IS A NO COST CONTRACT. In all matters concerning this contract, compensation for work performed shall be performance based. Specifically, compensation shall be funded through transaction proceeds. Proposals for other methods of compensation may be submitted for consideration. However, the contract must remain at no cost to the City.

Attachment B

GENERAL INFORMATION

1. Selection Process

The selection process is described below.

- A. After the period has closed for receipt of Request for Proposals (RFP), each will be examined to determine compliance with the format requirements specified in the RFP. Any proposal that does not meet the format requirements will be eliminated from competition and returned to the consultant. The City may reject any proposal if it is conditional, incomplete, or contains irregularities.
- B. A Selection Panel (SP) will review each proposal that meets the format requirements. SP members will individually evaluate and score each in accordance with the scoring system shown in Appendix C.
- C. Following independent evaluation of the proposal, the top candidates **may** be requested to participate in an interview which will be scored in accordance with part 2 of the evaluation criteria contained in Appendix C. However, **the City reserves the right to determine the qualifications of the firm on the basis of the written proposal only.**
- D. All competitors will be notified of the results.

2. Late Submittal

A proposal is late if received at any time after the required submittal date and time. A proposal received after the specified time will not be considered and will be returned to the proposer.

3. Modification or Withdrawal of Submittal

Any proposal received prior to the date and time specified above for receipt of proposal may be withdrawn or modified by written request of the consultant. To be considered, however, the modified proposal must be received by the required time and date specified.

4. Written Questions

Written questions should include the individual's name, address and must reference this RFP. All questions must be submitted by **Monday, June 14, 2010**. Questions should be mailed to the following address:

**Economic Development Department
Attn: Melissa Anguiano
915 I Street, Third Floor
Sacramento, CA 95814**

Questions may also be faxed to (916) 808-8161 or sent by e-mail to manguiano@cityofsacramento.org. Questions via phone will not be responded to.

5. Signature

The proposal shall be transmitted with a cover letter that must be signed by an official authorized to bind the prospective consultant contractually.

An unsigned proposal or one signed by an individual not authorized to bind the prospective firm will be rejected.

6. Insurance

The firm shall provide a summary of the firm's present and proposed insurance coverage (comprehensive general liability, automotive liability, and workers' compensation) for this project. Minimum limits of coverage are as follows:

Comprehensive General Liability	\$1,000,000 combined single limit
Automotive Liability	\$1,000,000 combined single limit
Workers' Compensation	(in accordance with State laws)

Prior to commencement of the work described in Scope of Services, a certificate of insurance shall be furnished stating the following:

1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the City.
2. That the City will not be responsible for any premiums or assessments on the policy.

The firm agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, the firm agrees to provide, at least thirty (30) calendar days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New certificates of insurance are subject to approval by the City. In the event the firm fails to keep in effect at all times insurance coverage as herein provided, the City may in

addition to any other remedies it may have, terminate this contract upon occurrence of such event.

7. Property Rights

A proposal received within the prescribed deadline becomes the property of the City and all rights to the contents therein become those of the City.

8. Confidentiality

Prior to award of the contract, all proposals will be designated confidential to the extent permitted by the California Public Records Act. After award of the contract, or if not awarded, after rejection of all proposals, all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the proposal confidential will be regarded as non-effective and will be disregarded.

9. Amendments to Request for Proposals

The City reserves the right to amend the RFP by addendum prior to the final proposal submittal date. The City also reserves the right to extend the due date, or to cancel this RFP at any time.

10. Non-Commitment of City

This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so.

11. Award of Contract

It is anticipated that compensation under any contract resulting from this Request for Proposals (RFP) will be on a no cost basis and set the brokerage fees for the transactions. Negotiations to establish the contract amount shall be finalized after the consultant selection process is completed.

Any contract awarded as a result of this RFP will be awarded without discrimination based on race, color, religion, age sex, or national origin.

The prospective consultant will be required to adhere to the provisions of a fully executed agreement. Provisions of the agreement shall be based on a standard agreement approved by the City Attorney. Attachment E is a sample of this standard agreement.

12. Execution of Contract

The prospective firm is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the City.

13. Public Domain

All products used or developed in the execution of any contract resulting from this RFP will remain in the public domain at the completion of the contract.

14. Coordination

Coordination of consultant and City activities will be accomplished through a Firm Project Manager and the City Project Manager. The Firm Project Manager shall not be removed from the project during the course of work without City approval.

The firm shall carry out instructions as received from the City Project Manager and shall cooperate with the City and any other contractors working on the project.

It is not the intent of the foregoing paragraph to relieve the firm of its professional responsibility during the performance of this contract. In those instances where the firm believes a better plan, methodology or solution to the problem is possible, it shall promptly notify the City Project Manager of these concerns, together with the reasons therefore.

15. Materials Provided by the City

All existing City codes, standards and other city documents related to the project will be available at the firm's request.

16. City Reserves the Right

The City reserves the right to modify this RFP at any time prior to the proposal due date, or to extend the proposal due date, or to cancel this RFP at any time.

Attachment C

EVALUATION CRITERIA WORKSHEET

WRITTEN PROPOSAL	MAXIMUM POINTS	REVIEWER SCORE
Introductory Letter – Reflects project understanding and summarizes critical issues, challenges, milestone tasks, and appropriate resourcing.	5	
Experience – Consultant has direct experience with City, state and/or federal projects and procedures.	5	
Project Team – Team organization, qualifications and experience of the firm, project manager, team, and sub-consultants on similar projects.	15	
Availability - Key personnel are available and committed to the project	5	
Workplan – Assignment, understanding, and organization of tasks, understanding of interrelationship of critical tasks, hour commitment to each task, deliverables.	20	
Quality Control - Consultant's internal controls, communications with City are adequate and timely, and provide assurance for complete submittals.	5	
Schedule – adequacy and reasonableness of schedule and deadlines.	5	
SUBTOTAL FOR SHORTLISTING	60	
References – see worksheet	10	
SUBTOTAL TO INTERVIEWS	70	
INTERVIEW		
Presentation by team – experience, roles and responsibilities, communication and coordination between team members, agencies, and City. PM - project understanding, critical issues, innovation, and solutions.	20	
Q&A – response to panel's questions.	10	
SUBTOTAL WITH INTERVIEWS	30	
TOTAL	100	
RANKING OF CONSULTANT FIRM (assigned after completion of scoring)		

Attachment D

SAMPLE CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

PROJECT #:
PROJECT NAME:
DEPARTMENT:
DIVISION:

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Name of Contractor
Address
Phone/Fax

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document

* This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.

relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

- 5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
- 6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
- 7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

CONTRACTOR:

By: _____

NAME OF FIRM

Print name: John Dangberg
Title: Assistant City Manager

Federal I.D. No.

For: Gus Vina, Interim City Manager

State I.D. No.

APPROVED TO AS FORM:

City of Sacramento Business Op. Tax Cert. No.

City Attorney

TYPE OF BUSINESS ENTITY (*check one*):

ATTEST:

- ____ Individual/Sole Proprietor
- ____ Partnership
- ____ Corporation (*may require 2 signatures*)
- ____ Limited Liability Company
- ____ Other (*please specify:* _____)

City Clerk

Attachments

Signature of Authorized Person

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: _____

Address: _____

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the [Ordinance](#)).
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date

after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Name/Title
Address
Phone/Fax/E-mail

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is ___ is not ___ [*check one*] required for this Agreement. If required, such coverage must be continued for at least _____ year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: yes no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the assuming office statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

- 4. Scope of Services.** *[Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]*

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

- 5. Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$_____.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

- C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
- D. Requests for payment shall be sent to:

*Office
Address
Phone/Fax*

Attn: _____

- 5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
- 7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are

valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered

by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of

one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the

certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement 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 the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Vacation
- Travel benefits
- Moving expenses
- Pension and retirement benefits
- Health benefits
- Membership or membership discounts
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
921 10th St., Room 402
Sacramento, CA 95814-2714

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Contract Services Unit
921 10th St., Room 402
Sacramento, CA 95814-2714
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.