RESOLUTION NO. 2010-232

Adopted by the Sacramento City Council

May 11, 2010

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR HOSTING AND MAINTENANCE SERVICES WITH ACCELA INC. IN THE NOT TO EXCEED AMOUNT OF $1,440,500.20 FOR FIVE YEARS OF HOSTING AND MAINTENANCE OF ACCELA AUTOMATION, A WEB-BASED PERMITTING AND REVENUE TRACKING SYSTEM UTILIZED BY THE COMMUNITY DEVELOPMENT DEPARTMENT AND VARIOUS OTHER CITY DEPARTMENTS.

BACKGROUND

A. The current hosting and maintenance agreement will expire at the end of the fiscal year; and

B. The Community Development Department requires an automated permit system; and

C. It is fiscally prudent to sign a five-year contract locking in a low rate.

D. The contract allows for the City to elect to"self-host" at any point during the time covered by the contract.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to execute a professional services agreement with Accela Inc. for an amount not to exceed $1,440,500.20.The Transition Fee will only be charged should the City elect to self-host. The fee will cover the cost of transitioning data and services from Accela's servers to the City's servers.

Year	Maintenance	Hosting	Total
1	154,059.15	101,223.94	255,283.09
2	161,762.11	106,285.14	268,047.25
3	169,850.21	111,599.39	281,449.60
4	178,342.72	117,179.35	295,522.07
5	187,259.86	123,038.33	310,298.19
	Transition Fee		29,900.00
Total	**$851,274.05**	**$559,326.15**	**$1,440,500.20**

Table of Contents:
Exhibit A - Contract

Adopted by the City of Sacramento City Council on May 11, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Mayor Kevin Johnson

Attest:

Shirley Concolino, City Clerk

Exhibit A

PROJECT #:
PROJECT NAME: Accela Automation Hosting and Maintenance Contract
DEPARTMENT: Community Development
DIVISION: Administration

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" or "CUSTOMER"), and

Accela, Inc.
2633 Camino Ramon, Suite 120
San Ramon, CA 94583
(925)659-3200

("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

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

By:_____

Print name:_____
Title:_____

For: Gus Vina, Interim City Manager

APPROVED TO AS FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachments

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

CONTRACTOR:

Accela, Inc.
NAME OF FIRM

94-2767678
Federal I.D. No.

1091962
State I.D. No.

101255
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY *(check one)*:
_____ Individual/Sole Proprietor
_____ Partnership
__X__ Corporation *(may require 2 signatures)*
_____ Limited Liability Company
_____ Other (*please specify:* _____)

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Accela, Inc.

Address: 2633 Camino Ramon, Suite 120, San Ramon, CA 94583

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

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

John Squires, Program Analyst
300 Richards Blvd, 3rd Floor
Sacramento, CA 95811
(916) 808-8047/jsquires@cityofsacramento.org

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:

Colin Samuels/Asst. Corporate Secretary
2633 Camino Ramon, Suite 120
San Ramon, CA 94583
(925) 659-3200

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 _X_ *[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 _X_ 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. The services provided shall be as set forth in Attachment 1 to Exhibit A, Attachment 2 to Exhibit A, Attachment 3 to Exhibit A and Attachment 4 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.

Attachment 1 to Exhibit A

1. Parties

ACCELA (Contractor")	CUSTOMER ("City" or "Customer")
Accela, Inc.	City of Sacramento, California
2633 Camino Ramon, Suite 120	300 Richards Boulevard
Bishop Ranch 3	Third Floor
San Ramon, California 94583	Sacramento, California 95811
Attention: Contracts Administration	Attention: Contracts Administration
T: 925.659.3200	T: 916.808.1918
F: 925.407.2722	F: 916.808.7708
e-Mail: contractsadmin@accela.com	e-Mail: accelaannie@cityofsacramento.org

2. Effective Date and Term Effective as of date of City's signature ("Effective Date") and will continue for a period of five (5) years. If City should elect to transition from an Accela-hosted to a self-hosted operating environment, Contractor and City will determine an appropriate commencement date of the Transition Services. Parties agree that said commencement date will occur no sooner than ninety (90) calendar days following Contractor's receipt of City's written notice to Contractor indicating its election to transition to a self-hosted operating environment.

3. Deliverables and Compensation

A. Application Services Agreement is included as Attachment 2 to Exhibit A.

B. Maintenance Terms attached is included as Attachment 3 to Exhibit A.

C. Transition Services Amendment is included as Attachment 4 to Exhibit A.

Deliverables	**Fees**
First-Term Annual Hosting Services for Accela Automation®, Accela Wireless™, Accela GIS™, Accela Citizen Access™, and Accela IVR™	$101,223.94
First-Term Annual Maintenance Fees for Accela Automation Land Management Site License	$92,348.55
First-Term Annual Maintenance Fees for Accela Wireless Site License	$24,148.95
First-Term Annual Maintenance Fees for Accela GIS Site License	$10,275.30
First-Term Annual Maintenance Fees for Accela Citizen Access (Based Upon Population of 400,000)	$17,218.95
First-Term Annual Maintenance Fees for Accela IVR, Tier 2 (12 Ports)	$10,067.40
Total of Fees	**$255,283.09**

First-Term Annual Hosting and Maintenance fees cover the period of July 1, 2010 through June 30, 2011 and are due July 1, 2010.

Second-Term Annual Hosting and Maintenance fees are subject to an annual increase of five percent (5%) over the previous year's fees, cover the period of July 1, 2011 through June 30, 2012, and are due July 1, 2011.

Third-Term Annual Hosting and Maintenance fees are subject to an annual increase of five percent (5%) over the previous year's fees, cover the period of July 1, 2012 through June 30, 2013, and are due July 1, 2012.

Fourth-Term Annual Hosting and Maintenance fees are subject to an annual increase of five percent (5%) over the previous year's fees, cover the period of July 1, 2013 through June 30, 1014, and are due July 1, 2013.

Fifth- Term Annual Hosting and Maintenance fees are subject to an annual increase of five percent (5%) over the previous year's fees, cover the period of July 1, 2014 through June 30, 2015, and are due July 1, 2014.

Hosting and Maintenance fees are due as described above unless Hosting and/or Maintenance services are terminated as provided in this Agreement.

D. The payment terms of all invoices are net forty-five (45) days from the dates of the invoices.

4. Terms and Conditions

4.1. Unless specifically amended, modified, or supplemented by this document, all terms and conditions of prior written agreements between the parties shall remain unchanged and in full force and effect. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.

Cost Summary

The Transition Fee will only be charged should the City elect to self-host. The fee will cover the cost of transitioning data and services from Accela's servers to the City's servers.

Year	Maintenance	Hosting	Total
1	154,059.15	101,223.94	255,283.09
2	161,762.11	106,285.14	268,047.25
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4	178,342.72	117,179.35	295,522.07
5	187,259.86	123,038.33	310,298.19
	Transition Fee		29,900.00
Total	**$851,274.05**	**$559,326.15**	**$1,440,500.20**

Attachment 2 to Exhibit A

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT
APPLICATION AND SERVICES AGREEMENT

1. This Application Services Agreement ("ASA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

2.1 Term This ASA commences concurrent with the Professional Services Agreement between the Parties ("Commencement Date") and will continue for a period of five (5) years. Notwithstanding, Should Customer elect to transition from an Accela-hosted operating environment, Accela and Customer will determine an appropriate commencement date for the Transition Services described in Attachment 4 to Exhibit A; Parties agree that said commencement date will occur no sooner than ninety (90) calendar days following Accela's receipt of Customer's written notice to Accela indicating its election to transition to a self-described in the Transition Services Amendment, whereupon this ASA will terminate.

2.2 Termination Either party may terminate if the other party materially breaches this ASA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) days. Upon any termination or expiration of this ASA, all rights granted to Customer are cancelled and revert to Accela.

3. Application Services Accela will provide the Accela Automation TM and related services ("Application Services") described below and will periodically update the Application Services as new versions thereof are publicly released by Accela.

3.1 Application Services include:
a) Interfaces Interface between the Land Management system and the City's Revenue Collector cashiering system and scheduling of inspections in Land Management system from the IVR system.
b) Peripherals – GIS Application software for the Accela GIS add-on module.
c) Peripherals – Wireless Application software for the Accela Wireless add-on module.
d) Citizen Access Application software for Citizen Access.
e) IVR Application software for the Accela IVR add-on module.

3.2 System Administration and Security The Application Services will be hosted by Accela on Accela-owned equipment at a physically-secure commercial third-party hosting facility. Accela will perform system administration duties as required to maintain the service levels described below and to facilitate timely restoration of Customer's data and operations, if necessary, following unanticipated interruptions of the Application Services. Accela will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Application Services.

3.3 Service Levels

3.3.1 Infrastructure Availability Accela will notify the city of intended maintenance activities at least 5 business days in advance and will work with the City to assure a minimal disruption in service to the City's customers. Accela warrants that the Application Services will be generally-available no less than ninety-eight (98%) of each calendar day. For each calendar day during which the availability of the Application Services does not achieve the established standard, Accela will credit $500.00 to Customer as liquidated damages, provided that the substandard availability is identified by Customer in writing or by e-mail to Accela and can be objectively verified.

3.3.2 Response Time: Accela will guarantee average on-line transaction processing response time of less than three (3) seconds within their data center. This does not include report requests, ad hoc queries or other batch processes. Accela will correct deficiencies in transaction processing response time within 5 working days.

3.3.3 Technical Support Customer will receive a telephone number to contact Accela's live technical support facilities, which are available from 4:00 a.m. until 6:00 p.m. Pacific Time Monday through Friday, excluding Accela's observed holidays. Customer may submit routine or non-critical support requests during its regular business hours. Technical product information may be found in Accela's sufficient technical and personnel resources to enable any required coordination with Accela's remedial efforts. Accela may make repeated efforts within a reasonable time period to resolve service requests; when a service request cannot be resolved as provided herein, Customer's exclusive remedy is a refund of the fees paid for the defective or non-conforming Application Services, or prorated portions thereof, pursuant to this ASA. Services which are required due to misuse of the Application Services, which are required due to corrections, customizations, or modifications not developed or authorized by Accela, which are required by Customer to be performed outside of Accela's usual business hours, or which are not reproducible are not covered by this ASA, but may be separately available at rates and on terms which may vary from those described herein. Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally released by Accela. Software updates will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

3.4 Compensation

3.4.1 Fees In exchange for the Application Services described hereinabove, commencing on the Commencement Date, Customer will pay to Accela the amounts designated Fees in Attachment 1 to Exhibit A.

3.4.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts as they become due. The payment terms of all invoices are net forty-five (45) days from the dates of the invoices subject to the City's prompt payment policy.

4. Proprietary Rights

4.1 Accela Property The Application Services are protected under the laws of the United States and the individual states and by international treaty provisions. Accela warrants that it has full power and authority to provide the Application Services and that, as of the Commencement Date of this ASA, the Application Services do not infringe on any existing intellectual property rights of any third party. If a third party claims that the Application Services do infringe, Accela, at its sole option, may secure for Customer the right to continue using the Application Services or may modify the Application Services so that these do not infringe. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise. Accela retains full ownership in the Application Services and grants to Customer a limited, nonexclusive, nontransferable license to use the Application Services, subject to the following terms and conditions:

4.1.1 The Application Services are provided for use by Customer employees other government agencies, contractors and applicants.

4.1.2 The Application Services may not be used by more than the number of users for which the Customer has user licenses. The Application Services are deemed to be in use when loaded into

memory in a computer, regardless of whether a user is actively working with the Application Services. Accela may audit Customer's use of the Application Services to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Application Services exceeds its licensed allowance, Customer agrees to pay all costs of its overuse as determined using Accela's then-current pricing; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Application Services.

4.1.3 Customer may copy Accela's documentation only for internal use by Customer's employees.

4.1.4 Customer may not make any form of derivative work from the Application Services, although Customer is permitted to develop additional or alternative functionality for the Application Services using tools or techniques licensed to Customer by Accela.

4.1.5 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.

4.1.6 Customer may use the Application Services only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights under this ASA.

4.1.7 Customer is not entitled to receive source codes for the Application Services except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties.

4.1.8 All rights not expressly granted to Customer are retained by Accela.

4.2 Customer Property Customer warrants that it exclusively owns its data and that it has both the right and authority to provide such data to Accela. Customer retains full ownership of its data and grants to Accela a limited, nonexclusive, nontransferable license to use its data only to perform Accela's obligations in accordance with the terms and conditions of this ASA. Within thirty (30) calendar days following termination or expiration of this ASA, Customer may request that Accela provide a complete copy of Customer's data, as such may be updated or modified by Customer's use of the Application Services, to Customer in a machine-readable format. Accela will comply in a timely manner with such request, provided that Customer a) pays the costs of copying, as calculated at Accela's then-current time-and-materials rates; and b) pays all unpaid amounts due to Accela.

5. Confidentiality

5.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

a) information which is in Recipient's possession prior to disclosure by Disclosing Party;

b) information which is available to Recipient from a third party without violation of this ASA or Disclosing Party's intellectual property rights;

c) information disclosed pursuant to Subsection 5.4 below;

d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;

e) information which is subpoenaed by governmental or judicial authority; and

f) information subject to disclosure pursuant to a state's public records laws.

5.2 Confidentiality Term The obligations described in this Section commence on the Commencement Date and will continue in perpetuity following any termination or expiration of this ASA ("Confidentiality Term").

5.3 Confidentiality Obligations During the Confidentiality Term, Accela will protect the confidentiality of

Confidential Information about City of Sacramento DSD clients per state and federal law. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

5.4 Publicity During the term of this ASA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer, Such disclosures may indicate Customer's identity and the Accela product(s) and services provided to Customer, but may not expressly or impliedly indicate Customer's endorsement of Accela's products or services without Customer's prior written authorization.

6. Other terms and Conditions

6.1 Disclaimer Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

6.2 Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this ASA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Application and Professional Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

6.3 Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

6.4 Survival The following provisions will survive the termination or expiration of this ASA: Section 3.2 ("Compensation") and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4.2 ("Customer Property"); Section 5 ("Confidentiality") and all subsections thereof; and Section 6 ("Other Terms and Conditions") and all subsections thereof.

6.5 Severability and Amendment If any particular provision of this ASA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this ASA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this ASA will be effective unless it is described in writing and signed by the Parties.

END OF DOCUMENT

Attachment 3 to Exhibit A

MAINTENANCE TERMS

1. These maintenance terms ("Maintenance") are intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

2.1 Term This Maintenance is effective concurrent with the Professional Services Agreement between the Parties and will continue for a period of five (5) years. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Vendor reserves the right to hold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, will pay an amount equivalent to (110%) of all maintenance fees attributable to the period(s) without coverage, as such fees are calculated based upon pricing in effect at the time of the resumption of maintenance coverage.

2.2 Termination Either party may terminate if the other party materially breaches this Maintenance and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) days. Upon any termination or expiration of this Maintenance, all rights granted to Customer are cancelled and revert to Accela.

3. Scope of Maintenance

3.1 Maintenance Services

3.1.1 Telephone Support Accela will provide Customer with a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

3.1.2 E-Mail Support Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours.

3.1.3 Online Support Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.

3.1.4 Remote Support When required to properly resolve a maintenance request, Accela will provide remote assistance to the Customer via the WebEx Meeting Center environment or another mutually-acceptable remote communications method.

3.1.5 On-Site Support If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and-materials rates. In addition to these charges, Customer will be compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.

3.1.6 Software Updates Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela.

3.2 Maintenance Limitations

3.2.1 Limitations Generally The following are not covered by this Maintenance, but may be separately available at rates and on terms which may vary from those described herein:

a) Services required due to misuse of the Accela-maintained software products;

b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;

c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;

d) Services required due to external factors including, but not necessarily limited to, Customer's use of software and hardware not authorized by Accela;

e) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;

f) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;

g) Services requested by Customer to implement software updates provided by Accela pursuant to this Maintenance; and

h) New or additional applications, modules, or functionality released by Accela during the term of this Maintenance.

3.2.2 Legacy Releases Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela are not provided pursuant to this Maintenance, but may be separately available at rates and on terms which may vary from those described herein.

3.3 Warranty Accela will commence and complete the maintenance obligations described in this Maintenance in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated effort within a reasonable time period to resolve maintenance requests. Customer's exclusive remedy is a refund of the maintenance fees paid to Accela for the defective or non-conforming software products; where this Maintenance has a multi-year term, such refund will comprise the maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding the Customer's maintenance request.

3.4 Compensation

3.4.1 Maintenance Fees In exchange for the Maintenance Services described hereinabove, Customer will pay to Accela upon the occurrence of the billing events described in Attachment 1 to Exhibit A the amounts designated as "Maintenance Fees".

3.4.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts as they become due. The payment terms of all invoices are net forty-five (45) days from the dates of the invoices per the City's prompt payment policy.

4. Confidentiality

4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or

Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personal information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this section:

a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
b) information which is available to Recipient from a third party without violation of this Maintenance or Disclosing Party's intellectual property rights;
c) information disclosed pursuant to Subsection 4.4 below;
d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
e) information which is subpoenaed by governmental or judicial authority; and
f) information subject to disclosure pursuant t a state's public records laws.

4.2 Confidentiality Term The obligations described in this Section commence on the Effective Date and will continue in perpetuity following any termination or expiration of this Maintenance ("Confidentiality Term").

4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information per federal and state law. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this Maintenance, including the term of any Amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer, but may not expressly or impliedly indicate Customer's endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

5.1 Customer Obligations As required Customer will provide Accela with appropriate access to Customer's facilities, data systems, and other resources. If Security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of Accela's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably-

attributable to such increased difficulty, as calculated at Accela's then-current time-and-materials rates.

5.2 Proprietary Rights The remedial methods, software updates, and product information provided to Customer pursuant to this Maintenance are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this Maintenance and other agreements between Accela and the Customer.

5.3 Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this Maintenance; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Application and Professional Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such service or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela by the Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

5.4 Force Majeure If either party is delayed in its performance of any obligation under this Maintenance due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performances as soon as practicable.

5.5 Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. Accela may subcontract with qualified third parties to provide portions of the Professional Services described hereinabove.

5.6 Survival The following provisions will survive the termination or expiration of this Maintenance: Section 2.1 ("Term"), as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon resumption of such coverage; Section 3.3 ("Warranty"), as to limitation of remedy; Section 3.4 ("Compensation") and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration Section 4 ("Confidentiality") and all subsections thereof; Section 5.2 ("Proprietary Rights"); Section 5.3 ("Limitation of Liability") Section 5.5 ("Assignment"); Section 5.6 ("Survival"); and Section 5.7 (Severability and Amendment").

5.7 Severability and Amendment If any particular provision of this Maintenance is determined to be invalid or unenforceable, that determination will not affect the other provisions of this Maintenance, which will be construed in all respects as if the invalid or unenforceable provisions were omitted. No extension, modification, or amendment of this Maintenance will be effective unless it is described in writing and signed by the parties.

END OF DOCUMENT

Attachment 4 to Exhibit A

TRANSITION SERVICES AMENDMENT

1. Effective date this amendment is effective ninety (90) calendar days following the date Accela receives Customer's written election to transition to a client-hosted operating environment, as described in the Application Services Agreement between the parties ("Effective Date").
2. Deliverables and Compensation Accela will provide the Professional Services described in Attachment 4.1; Customer will pay Accela for the Professional Services as described in Attachment 4.2.
3. Terms and Conditions

3.1 Professional Services are time-and-materials deliverables for which the Customer will be invoiced on a monthly basis as such Services are rendered. Number of hours described represents a good faith estimate by Accela of the number of hours of effort needed to complete the work and is not a guarantee. All actual project hours worked will be billed on a Time and Materials basis, regardless whether more or fewer hours are needed to complete the Professional Services. Just as there is no cap on the number of hours available to Accela to complete the work, there is no guarantee that Accela will need to work the number of hours estimated to complete the Professional Services. The pricing set forth herein reflects information generally known to Accela, supplied to Accela by Customer, and based on Accela's interpretation of the work to be performed. Further information gathered through detailed investigation and business analysis by Accela may be required before a final Statement of Work and pricing can be mutually agreed-upon.

3.2 Customer will be invoiced for all amounts as they become due; the payment terms of all invoices are net forty-five (45) days from the date of the invoice.

3.3 Amounts are quoted in United States dollars and, unless otherwise indicated, do not include applicable taxes. Customer will be responsible for payment of all federal, state (or provincial), and local taxes and duties (except those based on Accela's income), If Customer is exempt from certain taxes, Customer will provide Accela with a certificate of exemption issued by the applicable taxing authority.

3.4 Accela will notify Customer upon completion of the implementation services. For a period not to exceed thirty (30) calendar days in duration ("Test Period"), Customer may evaluate the operation of the Software in a test environment or using test data. If Customer reasonably determines that its operational use of the Software is substantially impaired by one or more material errors in the Software, it will so notify Accela in writing prior to the completion of the Test Period ("Adverse Notification"), specifying in sufficient detail the nature of the error(s). Upon receipt of an Adverse Notification, Accela will correct any identified and reproducible material errors in the Software within a reasonable time and Customer may retest the Software for as many as fifteen (15) additional calendar days. Acceptance will be deemed to occur when a) Customer notifies Accela that the Software have successfully completed Customer's testing; b) the Test Period or subsequent retesting period(s) are completed without an Adverse Notification being received by Accela from Customer; or c) Customer uses the Software in a "live" environment to perform its customary governmental, administrative, or business activities, whichever first occurs ("Project Completion Date").

3.5 As required, Customer agrees to provide Accela with appropriate access to Customer's facilities, personnel, data systems, and other resources. Customer acknowledges that the Professional Services described in this Amendment is cooperative in nature and that Customer must complete its designated tasks in a timely manner in order for Accela to proceed with and complete the Professional Services. Customer delays during the implementation period may have adverse collateral effects on

Accela's overall work schedule. Although Accela will use its best efforts to immediately resume work following such a delay, Customer acknowledges that schedules for the Professional Services may be delayed by more than the number of days delayed by Customer. Customer agrees that if additional time is required to complete the Professional Services because of Customer delays, such time will be charged to Customer at Accela's then-current time-and-materials rates.

3.6 Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Software may be adversely affected by remedial or other actions performed pursuant to this Amendment; Accela bears no liability for and has no obligation to remedy such effects. Except for as set forth herein, Accela provides all Application and Professional Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such service or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela during the twelve (12) calendar months immediately preceding the circumstances which gave rise to such claims of liability, even if Accela or its agents have been advised of the possibility of such damages.

3.7 If either party is delayed in its performance of any obligation under this amendment due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.

3.8 Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

3.9 Unless specifically amended, modified, or supplemented by this document, all terms and conditions of the Consultant and Professional Services Agreement and attached exhibits thereto shall remain unchanged and in full force and effect. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.

3.10 If any particular provision of this document is determined to be invalid or unenforceable, that determination shall not affect the other provisions which shall be construed in all respects as if the invalid or unenforceable provision were omitted.

3.11 Software license fees quoted in this agreement are fixed for transition services.

END OF DOCUMENT

Attachment 4.1 – Statement of Work for Transition Services

Definition: During the System Setup step of the self-hosted phase of this project, Accela's technical staff will work with the City of Sacramento technical group to ensure that the components for hardware, software, database, network, and Internet are in place for the hosted test and production environments. Accela technical staff will validate the proper installation and configuration of the Accela Automation hosted environment. Specifically, Accela will perform the following tasks:

- Install Accela software and perform quality assurance checks on the configuration and performance within key performance areas such as but not limited to the following: Application Search, Application Select, Workflow Select, Assign Inspection. As well, Peripherals will have key areas to test maximum performance.
- Migrate all System and Transactional data and then we will run comparison-timed studies in the following key areas stated above (**Note:** Comparison-timed studies will be based upon our Production Environment)
- Resolve performance issues by database and server tuning (memory allocation).
- Demonstrate that the Accela Automation Land Management, Citizen Access, Accela Wireless, Accela GIS, and Accela IVR applications are operational in the City of Sacramento environment.

The deliverable from the System Setup will be the installation of the self-hosted test and production environments.

City of Sacramento Responsibilities

- Arrange for the availability of appropriate people for the system installation, setup, testing, and quality assurance throughout the setup process
- Order and procure necessary hardware, non-Accela systems software, and networking infrastructure as specified by Accela.
- Provide people and physical resources based on the on the dates outlined in the project schedule.
- Prepare the hardware, software, and network in accordance with the specifications provided by Accela.
- Provide Accela with network access for remote installation and testing.

Acceptance Criteria: The System Setup will be accepted when Accela and the City agree that the self-host environments are successfully installed and configured. The City will be asked to confirm acceptance, See Attachment 4.3, and respond within 10 working days of its delivery with an acceptance signature or exception list. Accela has 10 working days to respond with corrections. If the City does not respond in 10 working days, the System Setup is considered accepted by the City.

Attachment 4.2 – Transition Service Pricing

Transitional Services Pricing

Service		Services Fees
Transitional Services from Accela Hosted to Agency Hosted	N/A	**$29,900.00**
Total		**$29,900.00**

Attachment 4.3 – Deliverables Acceptance Form

ACCELA
Building Speed

Please acknowledge acceptance in one of two ways 1) sign and fax the document to Accela Accounting Department, Attention Billing: 925-560-0061, or 2) email the document as an attachment to billing@accela.com stating "accepted" in the subject line or body of the email message.

Accela
Acceptance #:

Date:
City of Sacramento:
Approving City of Sacramento Manager:
Project Name/Code:
Contract/Agreement Name/Number/Date:
Accela Manager:

City of Sacramento agrees that Accela has successfully completed the following Deliverables / Milestones:

Deliverable / Milestone Item Name/#	Source / Reference Details	Amounts Billable
		$
		$

City of Sacramento agrees that Accela has successfully completed the Deliverables/Milestones described above and therefore agrees to pay all invoices in connection with the acceptance of the(se) Deliverables/Milestones in accordance with the terms of the related Contract/Agreement.

APPROVALS:
City of Sacramento Name:

_____
Signature

_____
Title

_____
Date

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 Attachment 1 to Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of $1,440,500.20. This total includes the transitional service pricing if the City decides to self-host as provided in Attachment 4 to Exhibit A.

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 A, attached hereto and incorporated herein.

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 A. 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, when applicable:

      (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:

Community Development Department
300 Richards Blvd, 3rd Floor
Sacramento, CA 95811
(916) *808-8289/accelaannie@cityofsacramento.org*
Attn: Contract Services

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 C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

_X_ Not furnish any facilities or equipment for this Agreement; or

____ furnish the following facilities or equipment for the Agreement; [*list, if applicable*]

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. 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. Notwithstanding, CONTRACTOR may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

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
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- 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:

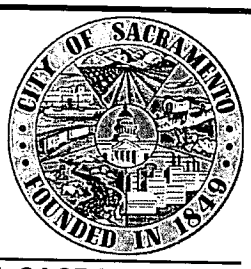
  City of Sacramento
  Contract Services Unit
  921 10th St., Room 402
  Sacramento, CA 95814-2714

- 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 . . .

O 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

O 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.