

## RESOLUTION NO. 2011-002

Adopted by the Sacramento City Council

January 4, 2011

### AGREEMENT: CARDIOVASCULAR FITNESS EQUIPMENT

#### BACKGROUND:

- A. On May 12, 2009, the City Council authorized the Fire Department to apply for, accept any grant funding and establish the Wellness/Fitness Initiative Grant (G12901700) under the 2009 Assistance to Firefighters Grant (AFG) program. The Fire Department was awarded \$513,002 under the AFG program administered by the Federal Emergency Management Agency (FEMA). A portion of the grant funding was budgeted for the purchase of cardiovascular fitness equipment located at each fire station and at the Division of Training.
- B. In September 2010, an Invitation for Bid (B112552004) for the purchase of cardiovascular fitness equipment was issued. Two (2) vendors, Advantage Fitness Products and All Around Fitness, submitted bids. The grant administration team evaluated the bids and determined the apparent lowest responsible bidder was Advantage Fitness Products.
- C. In October 2010, All Around Fitness filed a Formal Bid Protest and a Protest Hearing was held in their behalf. It was determined that both vendors, Advantage Fitness Products and All Around Fitness, did not meet the specifications as written in the Invitation for Bid.
- D. Based on bids received and research performed, staff found that the Precor AMT100i:  
1) was the best suited cardiovascular equipment for firefighter biomechanics by providing the ability to vary stride length, height and pace at any time (similar to emergency scene operations) while adjusting to a variety of body sizes and conditions,  
2) is of commercial quality and was found to be the most versatile of the equipment in its ability to function as stepmill, elliptical or treadmill allowing for the most fiscal use of Grant in the purchase of a "3 in 1" fitness machine and 3) provided the smallest footprint for fit in fire stations without needing facility upgrades.
- E. Advantage Fitness Products is the sole distributor for the sale of Precor AMT100i in the State of California.
- F. Based on the above, staff recommends to reject all bids submitted under Bid No. B112552004, to suspend competitive bidding in the best interest of the City of Sacramento for the purchase of cardiovascular fitness equipment, and award an agreement with Advantage Fitness Products who retains exclusive rights to distribute the Precor AMT 100i in the State of California, for the one time purchase of Precor AMT 100i's for an amount not to exceed \$157,000.

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

- Section 1. All bids submitted for Bid No. B112552004 for the purchase of cardiovascular fitness equipment are rejected.
- Section 2. In the best interest of the City, competitive bidding is hereby suspended for the purchase of cardiovascular fitness equipment.
- Section 3. The Interim City Manager, or his designee, is hereby authorized to execute the agreement with Advantage Fitness Products (Exhibit A and made a part of this Resolution) for the purchase of Precor AMT 100i fitness equipment in an amount not to exceed \$157,000.

**Table of Contents:**

Exhibit A – Commodities Agreement with Advantage Fitness Products

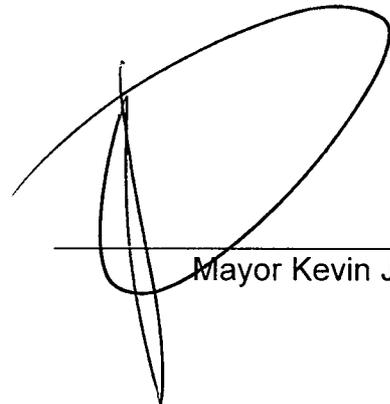
Adopted by the City of Sacramento City Council on January 4, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

*All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.*

PROJECT #:  
PROJECT NAME: Cardiovascular Fitness Equipment  
DEPARTMENT: Fire  
DIVISION: Training

CITY OF SACRAMENTO  
COMMODITY PURCHASE AGREEMENT

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

*Advantage Fitness Products, Int.  
3520 Hayden Ave., Suite 100  
Culver City, CA 90232  
Ph: (415) 568-8321 / Fax: (415) 358-4671*

("CONTRACTOR"), who agree as follows:

1. **Agreement.** The Agreement shall consist of this Agreement and each of the following attached documents (if applicable), which are incorporated herein by reference:

General Conditions	Workers' Compensation Certificate
Special Provisions	Contractor's Bid Proposal Form
Certificate(s) of Insurance	ESBD Program Statement
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Pricing Schedule	
Declaration of Compliance (Equal Benefits Ordinance)	
2. **Commodities.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the items listed in the attached Pricing Schedule set forth in Exhibit A, in accordance with the terms and conditions of this Agreement
3. **Payment.** CITY shall pay CONTRACTOR the total cost for the items as indicated in the pricing Schedule set forth in Exhibit A pursuant to the terms and conditions of this Agreement.
4. **General Conditions.** The General Conditions set forth in Exhibit B, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Conditions 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 furnishing of commodities or payment therefor, the General Conditions shall control over said terms or conditions.
5. **Special Provisions and Technical Specifications.** The Special Provisions and Technical Specifications are set forth in Exhibit D and are a part of this Agreement.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento Municipal Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento Municipal Code Chapter 3.54 are summarized in Exhibit D. The CONTRACTOR is required to sign the attached Declaration of Compliance

(Equal Benefits Ordinance), to assure compliance with these requirements.

- 7. **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.
- 8. **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 – Commodities-Price Schedule
- Exhibit B – General Conditions
- Exhibit C – Non-Discrimination in Employee Benefits
- Exhibit D – Special Provisions

**CONTRACTOR:**

AFP INTERNATIONAL, LLC.  
NAME OF FIRM

95-4685814.  
Federal I.D. No.

\_\_\_\_\_  
State I.D. No.

1005938  
City of Sacramento Business Op. Tax Cert. No.

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

G.T. Stirling  
Signature of Authorized Person  
GORDON T. STIRLING  
Print Name and Title

KAY BRIDGES MUMFORD  
Additional Signature (if required)

\_\_\_\_\_  
Print Name and Title

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: AFP INTERNATIONAL LLC. / ADVANTAGE FITNESS PRODUCTS.

Address: 3520 HAYDEN AVE SUITE 100 . CONVERSE CITY . CA . 90232

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 F.
2. As a condition of receiving this Contract, 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 Municipal 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts 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 Contract 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.

*G.T. Stirling*  
Signature of Authorized Representative

\_\_\_\_\_ Date

GORDON, T. STIRLING.  
Print Name

Key Account Manager  
Title

**EXHIBIT A**

**CITY OF SACRAMENTO  
SACRAMENTO, CALIFORNIA**

**PRICING SCHEDULE**

For furnishing to the City of Sacramento, Fire Department with Precor Adaptive Motion Trainer (AMT) 100i cardiovascular fitness equipments, in accordance with the provisions and specifications contained herein:

TOTAL COST FOR (26) Precor Adaptive Motion Trainer (AMT) 100i	\$140,088.00
SACRAMENTO COUNTY TAX 8.75%	\$ 12,257.70
INSTALLATION AND TRAINING	<u>\$ 4,500.00</u>
TOTAL INCLUDING TAX, INSTALLATION AND TRAINING	<u>\$156,845.70</u>

Delivery should be within 60 days after receipt of order

**EXHIBIT B**

**GENERAL CONDITIONS**

**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. 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 under 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 perform 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 perform under the Agreement. 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 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 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 Municipal Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

**7. CONTRACTOR Information.**

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any performance by CONTRACTOR under this Agreement, 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's performance under this Agreement shall be 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 pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the 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 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. Indemnity.**

A. Indemnity: CONTRACTOR shall indemnify and save harmless, CITY, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable 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"), to the extent such Liabilities are caused by or arise from any negligent act or omission, recklessness or willful misconduct of CONTRACTOR, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not (i) such Liabilities also are caused in part by the passive negligence of the CITY, its officers or employees, (ii) the CITY, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the CONTRACTOR, or (iii) such Liabilities are litigated, settled or reduced to judgment.

B. Obligation to Defend: CONTRACTOR shall, upon CITY's request, defend at CONTRACTOR's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities caused by or arising from any negligent act or omission, recklessness or willful misconduct of CONTRACTOR, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 10, 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.

**10. 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 performance 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)

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) 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 subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

11. **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.

12. **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 Municipal Code.
13. **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.
14. **Waiver.** Neither CITY acceptance of, or payment for, any service performed by or merchandise furnished 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.
15. **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.
16. **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.

17. **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.
18. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
19. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for reinspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
20. **Funding Availability.**
  - A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
  - B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council.
  - C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
  - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
21. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.
22. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
23. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any

material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 17 of these General Conditions.

24. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials or merchandise provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
25. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
26. **Termination.**

A. **Termination for Cause.** If the Procurement Services Manager determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the Contractor fails to correct the unsatisfactory condition(s) within 5 days, the Procurement Services Manager may declare the Contract terminated upon 30 days written notice and may, in the Procurement Services Manager's sole discretion, demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.

B. **Termination for Convenience.** The City may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits which have not been earned, or any other costs which have not been incurred, as of the date of termination.

C. **Termination After Completion Date.** If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. The City may thereafter proceed to complete the Contract either by rebidding or otherwise, and the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract

on time.

27. **Guarantee.** The Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed does not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.
28. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
  - A. **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform this Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
  - B. **Sellers Permit:** For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
  - C. The above provisions shall apply in all instances unless prohibited by the funding source for this Agreement.
29. **Entire Agreement; Order of Precedence.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code. In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:
  - A. Post-Award Amendments.
  - B. Pricing Schedule(s), as corrected by City, if applicable.
  - C. Pre-Award Addenda.
  - C. Special Provisions.
  - D. Bid Instructions and Requirements.
  - E. General Conditions
  - F. Technical Specifications and/or Plans

## **EXHIBIT C**

### **REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

#### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento Municipal 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.

## **EXHIBIT C**

"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."

**EXHIBIT C**

**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 Municipal 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,

**EXHIBIT C**

**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  
Procurement Services Division  
5730 24th St., Bldg. 1  
Sacramento, CA 95822

- **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**

**EXHIBIT C**

**Attachment B**



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

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

The included employee benefits are:

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

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

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Procurement Services Division  
5730 24th St., Bldg. 1  
Sacramento, CA 95822
- 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.

## **EXHIBIT D**

### **SPECIAL PROVISIONS**

#### **CONTRACT INTENT**

Specifications contained within this bid are written with the intent to meet and comply with all requirements but the final certification to comply shall rest with the Contractor and not the City of Sacramento. Should requirements as specified not comply, the Contractor is required to refigure and revise the specifications to meet all laws, rules, and regulations, where it applies, and the City of Sacramento is to be notified thereof.

#### **DEFAULT BY CONTRACTOR**

In case of default by Contractor, the City reserves the right to procure the articles or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby.

#### **EVALUATION (INSPECTION)**

Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.

#### **ACCEPTANCE TEST**

After installation and set-up, the Contractor is required to demonstrate that the equipment provided functions properly. Failure to satisfy this acceptance test may result in rejection of the equipment with no financial obligation incurred by the City.

#### **PRICES**

In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City.

#### **COOPERATIVE PURCHASING**

The use of this contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification; and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

#### **MODIFICATION OF CONTRACT**

The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:

- A. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
- B. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whatsoever shall in any manner or degrees modify or otherwise affect the terms of this contract, including the requirements of the specifications.

#### **PAYMENT TERMS**

Payment terms are net 30 days. All cash discounts, if taken, shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of vendor's invoice.

#### **PAYMENT AND INVOICING**

Invoices shall be mailed or delivered to City of Sacramento Fire Department, 5770 Freeport Blvd., Suite 200, Sacramento, CA 95822, Attention: Accounts Payable.

#### **PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The granting of any payments by the City, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor.

#### **WARRANTY**

Contractor shall provide bumper to bumper warranty coverage for 3 years on parts and 3 years on labor on each cardiovascular fitness equipment. Contractor also shall provide 7 years warranty on frame and 5 years warranty on motor and consoles on each cardiovascular fitness equipment;

#### **F.O.B.**

All items are to be supplied F.O.B., City of Sacramento, California, freight prepaid and allowed.

#### **EMPLOYEES**

The Contractor shall employ only competent and satisfactory personnel and shall provide a sufficient number of employees to perform the required services efficiently and in a manner satisfactory to the City. If the City notifies the Contractor in writing that any person employed on this contract is incompetent, disorderly, or otherwise unsatisfactory, such a person shall not again be employed in the execution of this contract without the written consent of the City.

#### **FURNISH AND INSTALL**

The equipment to be provided in this agreement will be provided on a Contractor furnish and install basis. The Contractor will install the equipment based on a facility layout provided by the City. The delivery date must be coordinated with the City. The Contractor will have the complete responsibility for the items until it is in place and working. Any special installation requirements will be submitted with the bid to the City. All transportation and installation arrangements will be the responsibility of the Contractor. Equipment will be delivered directly to each installation site. Delivery notification must be made to John Hofman at least two (2) work days prior to delivery. All crating and other debris must be removed from the premises. The Contractor will be solely responsible for correcting damage to premises resulting from the installation process. Precautions will be expected to protect all flooring on the delivery and installation path.

#### **REQUIRED DELIVERY**

All Items must be delivered and unpacked no less than sixty (60) days from the date of this agreement. Contractor shall deliver the cardiovascular fitness equipment directly to each installation site, as listed on the delivery locations on the following page of this agreement.

#### **ACCESSORIES AND MANUALS**

The Contractor shall provide, with each piece of equipment, all spare parts, video tapes, CDs, DVDs, owner's manuals, and repair manuals included with the equipment.

#### **TRAINING**

Contractor shall provide complete Train-the-Trainer for all Qualified Fire Fitness Personnel. Training will include daily maintenance procedures, long term maintenance practices, and available diagnostic evaluations, as well as program use and operation.

Delivery Locations:

Below is the list of the 24 locations on where to deliver the 25 units (delivery of equipment does not need to be in this order):

1. Fire Station #1 – 624 Q Street, Sacramento, CA 95811
2. Fire Station #2 – 1229 I Street, Sacramento, CA 95814
3. Fire Station #3 – 7208 West Elkhorn Boulevard, Sacramento, CA 95837
4. Fire Station #4 – 3145 Granada Way, Sacramento, CA 95816
5. Fire Station #5 – 731 Broadway, Sacramento, CA 95818
6. Fire Station #6 – 3301 Martin Luther King Boulevard, Sacramento, CA 95817
7. Fire Station #7 – 6500 Wyndham Drive, Sacramento, CA 95823
8. Fire Station #8 – 5990 H Street, Sacramento, CA 95819
9. Fire Station #10 – 5642 66<sup>th</sup> Street, Sacramento, CA 95824
10. Fire Station #11 – 785 Florin Road, Sacramento, CA 95831
11. Fire Station #12 – 4500 24<sup>th</sup> Street, Sacramento, CA 95822
12. Fire Station #13 – 1100 43<sup>rd</sup> Avenue, Sacramento, CA 95831
13. Fire Station #14 – 1341 North C Street, Sacramento, CA 95811
14. Fire Station #15 – 1591 Newborough Drive, Sacramento, CA 95833
15. Fire Station #16 – 7363 24<sup>th</sup> Street, Sacramento, CA 95822
16. Fire Station #17 – 1311 Bell Avenue, Sacramento, CA 95838
17. Fire Station #18 – 746 North Market Boulevard, Sacramento, CA 95834
18. Fire Station #19 – 1700 Challenge Way, Sacramento, CA 95815
19. Fire Station #20 – 2512 Rio Linda Boulevard, Sacramento, CA 95815
20. Fire Station #30 – 1901 Club Center Drive, Sacramento, CA 95835
21. Fire Station #56 – 3720 47<sup>th</sup> Avenue, Sacramento, CA 95823
22. Fire Station #57 – 7927 East Parkway, Sacramento, CA 95823
23. Fire Station #60 – 3301 Julliard Drive, Sacramento, CA 95826
24. Fire Training (3 units here) – 2409 Dean Street, McClellan, CA 95652





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED BY CONTRACT OR AGREEMENT -  
OPTION III**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Designated Project(s) or Location(s) Of Covered Operations
<p>ANY PERSON OR ORGANIZATION WITH WHOM YOU, BY WRITTEN CONTRACT OR AGREEMENT, HAVE AGREED TO PROVIDE PRIMARY ADDITIONAL INSURED.</p>	
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

- A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule above with whom you agreed in a written contract or written agreement to provide insurance such as is afforded under this policy, but only to the extent that such person or organization is liable for "bodily injury", "property damage" or "personal and advertising injury" caused by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations for such additional insured at the project(s) or location(s) designated in the Schedule;
  2. In connection with your premises owned by or rented to you and shown in the Schedule; or
  3. In connection with "your work" for the additional insured at the project(s) or location(s) designated in the Schedule and included within the "products-completed operations hazard", but only if:
    - a. The written contract or agreement requires you to provide such coverage to such additional insured at the project(s) or location(s) designated in the Schedule; and
    - b. This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- B.** The insurance afforded to these additional insureds applies only:
1. If the "occurrence" or offense takes place subsequent to the execution of such written contract or written agreement; and
  2. While such written contract or written agreement is in force, or until the end of the "policy period," whichever is earlier.
- C.** With respect to the insurance afforded to these additional insureds under this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional architectural, engineering or surveying services by or for you, including:

1. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or specifications; and
2. Supervisory, inspection, architectural or engineering activities.

**D. How Limits Apply To Additional Insureds**

The most we will pay on behalf of the additional insured shown in the Schedule is the lesser of:

1. The limits of insurance specified in the written contract or written agreement; or
2. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

**E. Duties Of Additional Insureds In The Event Of Occurrence, Offense, Claim Or Suit**

The Duties Condition in Section IV - Conditions is replaced by the following and applies to the additional insured shown in the Schedule:

**1. Notice Of Occurrence Or Offense**

The additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- a. How, when and where the "occurrence" or offense took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the "occurrence" or offense.

**2. Notice Of Claim**

If a claim is made or "suit" is brought against the additional insured, the additional insured must:

- a. Immediately record the specifics of the claim or "suit" and the date received; and
- b. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

**3. Assistance And Cooperation Of The Insured**

The additional insured must:

- a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

**4. Obligations At The Additional Insureds Own Cost**

No additional insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**5. Additional Insureds Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to the additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

**6. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs 1. and 2. applies to the additional insured only when such "occurrence", offense, claim or "suit" is known to:

- a. The additional insured that is an individual;
- b. Any partner, if the additional insured is a partnership;
- c. Any manager, if the additional insured is a limited liability company;
- d. Any "executive officer" or insurance manager, if the additional insured is a corporation;
- e. Any trustee, if the additional insured is a trust; or
- f. Any elected or appointed official, if the additional insured is a political subdivision or public entity.

**F. Other Insurance**

With respect to insurance provided to the additional insured shown in the Schedule, the Other Insurance Condition Section IV - - Conditions is replaced by the following:

**1. Primary Insurance**

**a. Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in 3. below.

**b. Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs a. and b. do not apply to other insurance to which the additional insured has been added as an additional insured or to other insurance described in paragraph 2. below.

**2. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

**a. Your Work**

That is fire, extended coverage, builder's risk, installation risk or similar coverage for "your work";

**b. Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**c. Tenant Liability**

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

**d. Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

**e. Property Damage to Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A Bodily Injury And Property Damage Liability; or

**f. When You Are Added As An Additional Insured To Other Insurance**

That is any other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

a. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

b. The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**3. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.