

## **RESOLUTION NO. 2011-427**

Adopted by the Sacramento City Council

July 26, 2011

### **AGREEMENT WITH GOVDELIVERY, INC FOR EMAIL SUBSCRIPTION SERVICES**

#### **BACKGROUND**

- A. The city of Sacramento currently contracts with GovDelivery for an automated email subscription management system.
- B. The GovDelivery system currently outreaches to approximately 10,000 subscribers on topics including upcoming events, new programs and news alerts. This system has improved communication with the public by utilizing email to deliver important alerts, announcements, and updated information.

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

- Section 1. The City Manager or his designee is authorized to execute a professional services agreement with GovDelivery, Inc. for email subscription services, attached hereto as Exhibit A, for a total amount not to exceed \$95,388.
- Section 2. The agreement provides for an initial term of one year, with the option to extend for additional one year terms, up to a total agreement term of three years (including the initial term and all extensions). The City Manager may authorize such extensions provided that sufficient funds are available in the budget adopted for the applicable Fiscal Year(s).
- Section 3. Exhibit A is a part of this resolution.

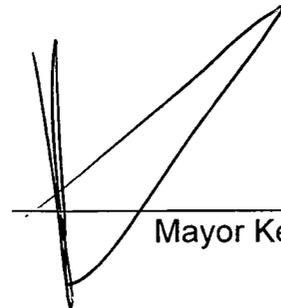
Adopted by the City of Sacramento City Council on July 26, 2011 by the following vote:

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



# City of Sacramento

# Resolution

Requires Council Approval:

~~NO~~ **YES**

Meeting: 7/19/11

Real Estate

Other Party Signature Needed

Recording Requested

### General Information

Type: Professional Services	Attachment: No.:
Not to Exceed: \$ 95,388	Original Doc Number: 2008-0636
Other Party: GovDelivery	Certified Copies of Document::
Project Name: Hosting & Maintenance Services for GovDelivery email subscription management systems through 6/29/2011	Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #: E/SBE-DBE-M/WBE:

### Department Information

Department: City Manager

Division: Ex. Office

Project Mgr: Amy Williams

ACM

Contract Services: Kathy McAllister

Dept ID: 02001011

Phone: ext 7947

### Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	Amy Williams	
Accounting:		
Contract Services:	Kathy Mc <i>Ymcker</i>	
Supervisor:		
Division Manager:		

City Attorney	Signature or Initial	Date
City Attorney:	Janeth San Pedro <i>JSP</i>	7/13/11

Send Interoffice Mail       Notify for Pick Up

Authorization	Signature or Initial	Date
Department Director:		
City Mgr: yes X No <input type="checkbox"/>	Cassandra H. B. Jennings	

Contract Cover/Routing Form: Must Accompany ALL Contracts;

**For City Clerk Processing**

**Finalized:**

Initial: \_\_\_\_\_

Date: \_\_\_\_\_

**Imaged:**

Initial: \_\_\_\_\_

Date: \_\_\_\_\_

**Received:**  
(City Clerk Stamp Here)



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: JD

DATE (MM/DD/YYYY)

05/12/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Otis-Magie Insurance Agency, Inc. Suite 900 Missabe Bldg. P.O. Box 137 Duluth, MN 55801-0137 Thomas C. Stender	218-722-7753	CONTACT NAME: Judy Davern
	218-722-7756	PHONE (A/C No., Ext): 218-625-2103 FAX (A/C No): 218-722-7756
E-MAIL ADDRESS: jdavern@otismagie.c		PRODUCER CUSTOMER ID #: GOVDO-1
INSURED GovDelivery, Inc. 408 St Peter St Ste 600 St. Paul, MN 55102		INSURER(S) AFFORDING COVERAGE
		INSURER A : The Hartford Insurance Company 34690
		INSURER B :
		INSURER C :
		INSURER D :
		INSURER E :
		INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR / WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Adv Inj excluded GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X	41SBAUM2931	05/15/11	05/15/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Emp Ben. \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	41SBAUM2931 41SBAUM2931	05/15/11 05/15/11	05/15/12 05/15/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	41SBAUM2931	05/15/11	05/15/12	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Prof Liability		TE 0269758 11	05/15/11	05/15/12	Limit 1,000,000 Retention 10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Sacramento, its officials, agents, employees & volunteers are listed as Additional Insureds - See attached Additional Insured Endorsement/Liability policy.  
Email kmcallister@cityofsacramento.org

CERTIFICATE HOLDER	CANCELLATION
BLANK-1	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
City of Sacramento, CA C/O EBIX BPO PO Box 257 Ref #108-2337490 Portland, MI 48875-0257	AUTHORIZED REPRESENTATIVE 

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POLICY NUMBER: 41 SBA UM2931



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

ADDITIONAL INSURED - PERSON-ORGANIZATION

02465

\*1100241UM29310112

CITY OF SACRAMENTO, CA  
ITS OFFICIALS, AGENTS, EMPLOYEES AND VOLUNTEERS  
C/O EBIX BPO REF # 106-Z337490  
PO BOX 257  
PORTLAND, MI 48875-0257



PROJECT #: E-mail Subscription Management  
DEPARTMENT: City Manager

CITY OF SACRAMENTO  
PROFESSIONAL SERVICES AGREEMENT \*

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

*GovDelivery, Inc. (Contractor)*  
408 St. Peter Street, Suite 600  
St. Paul, MN 55102  
Phone: 886-276-5583

("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

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

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

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

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

**CONTRACTOR:**

By: \_\_\_\_\_  
Cassandra H.B. Jennings,  
Assistant City Manager  
For: William H. Edgar, Interim City Manager

GovDelivery, Inc.  
41-1941088  
Federal I.D. No.  
4690080 (Minnesota)  
State I.D. No.  
158062  
City of Sacramento Business Op. Tax Cert. No.

APPROVED TO AS FORM:

  
Janeth San Pedro, Senior Deputy City Attorney

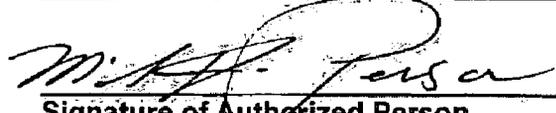
ATTEST:

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

\_\_\_\_\_  
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

  
Signature of Authorized Person

Michael F. PEARSON  
Print Name and Title Director, STATE + LOCAL

\_\_\_\_\_  
Additional Signature (if required)

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: GovDelivery, Inc.

Address: 408 St. Peter Street, Suite 600, St. Paul, MN 55102

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.

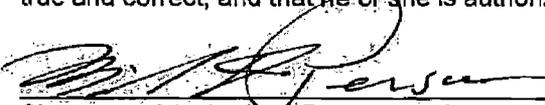
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements 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

Michael F. Pearson  
Print Name

DIRECTOR, STATE & LOCAL  
Title

**EXHIBIT A**  
**PROFESSIONAL SERVICES AGREEMENT**  
**SCOPE OF SERVICES**

**1. Representatives.**

The CITY Representative for this Agreement is:

*Amy Williams, Public Information Office  
City of Sacramento – City Manager’s Office  
915 I Street, Fifth Floor, Sacramento, CA 95814  
916.808.5704; [awilliams@cityofsacramento.org](mailto:awilliams@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:

*Sara VonBargen, GovDelivery, Inc.  
408 St. Peter Street, Suite 600  
St. Paul, MN 55102  
886.276.5583; [sara.vonbargen@govdelivery.com](mailto:sara.vonbargen@govdelivery.com)*

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  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, 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**

### **SCOPE OF SERVICES**

#### **Executive Summary**

The City of Sacramento (the "City") wants to reduce costs and improve communication with residents by utilizing e-mail to deliver important alerts, announcements, and updated information to residents. The City needs an automated e-mail subscription management system that works seamlessly with the City's website content management system and is easy for staff to manage.

#### **GovDelivery® Digital Communication Platform Will Allow the City of Sacramento to Improve Communication and Lower Costs**

GovDelivery will allow the City of Sacramento to provide its residents with:

- Real-time distribution of information, updates, and alerts on specific topics.
- Ensured delivery of messages to resident's inbox (not SPAM folders).
- Assured and immediate delivery of SMS text messages to their mobile devices.
- Personal profile of City e-mail subscriptions and reminders

GovDelivery provides the City with a robust Digital Communication Platform that:

- Automates inbound requests, outbound message creation, sending, and delivery of SMS text messages.
- Automates the composing, sending and deliverability of email, text messaging and RSS notifications.
- Provides a secure and reliable hosted environment.
- Integrates with existing backend systems via the web or a secure API.
- Decreases need for direct mail, phone calls and other administrative overhead.

#### **Why should the City of Sacramento use GovDelivery's Digital Communication Platform?**

GovDelivery is a proven provider of Email and Digital Subscription Management to hundreds of U.S. government agencies. GovDelivery's mission is to make it practical for the City to provide a reliable email and digital communication channel to its residents, while saving costs associated with traditional information distribution. GovDelivery manages all databases, mass emailing issues, security, and technology upgrades so the City can focus on promoting subscriptions and improving other components of its website. In addition, GovDelivery can ensure utilization by watching the City's web pages and automatically sending appropriate e-mails when relevant changes are made to website content.

### **GovDelivery Digital Communication Platform**

The GovDelivery Digital Communication Platform (DCP) encompasses the functionality of both Text Messaging and Digital Subscription Management. The DCP is an automated system that uses email, RSS and text alerts to notify citizens about specific topics of interest. It uses proprietary technology to monitor public sector organizations' websites for content updates and automatically sends personalized email, RSS and text alerts to interested citizens who opt to receive the information.

GovDelivery's DCP operates as Software as a Service (SaaS), a software application delivery model hosted and operated by GovDelivery for use by its clients over the Internet. GovDelivery manages the maintenance, support, training and upgrades and is responsible for all hardware, networking, storage, database, security, administration and other costs associated with the delivery of its DCP solution.

### **Assured Deliverability**

GovDelivery manages each user request through the Digital Communications Platform via automation. Every delivery exception is logged and followed up by GovDelivery Client Services and Operations staff to ensure that messages are delivered in a timely and effective manner. GovDelivery provides assurance that each message is delivered and will work directly with the aggregators and cellular providers to ensure the highest deliverability standards.

### **GovDelivery Deliverability Checklist**

GovDelivery takes the following steps to ensure the highest deliverability rates for clients:

- **Maintain relationship with key SMS Aggregators.**  
GovDelivery manages partnerships with third-party SMS aggregators to ensure high-quality, fast delivery, and robust messaging capability.
- **Monitor "undelivered" SMS text messages.**  
GovDelivery actively monitors SMS messages that do not get delivered and proactively communicates with the aggregators and cellular providers to ensure timely recovery.
- **Maintain whitelist status with major ISPs.**  
GovDelivery proactively engages with major ISPs to maintain whitelist status, allowing email to be delivered even if spam filters are in place.
- **Monitor "block" lists.**  
GovDelivery actively monitors these lists of senders, from whom ISPs will not accept email, to ensure that it remains off them.
- **Maintain clean email lists.**  
GovDelivery automatically validates email addresses with ISPs and proactively removes invalid email addresses from lists before sending.
- **Confirm permission.**  
"Block" listers are imposing increasingly stricter permission standards for bulk email senders, including requiring senders to confirm permission to send to recipients. Permission to send to recipients is given when subscribers sign up to receive email updates. GovDelivery automatically sends confirmation emails to subscribers whenever a new profile is created or changes are made to an existing profile.
- **Adhere to federally mandated CAN-SPAM email compliance standards.**  
Remaining on top of ever-changing anti-spam regulations is no easy task. GovDelivery dedicates significant resources to stay up-to-date on current email laws to ensure its clients are compliant.

- **Maintain ISP Test Inboxes.**

GovDelivery maintains email test accounts with all major ISPs to ensure that email sent on behalf of clients is landing in inboxes and not in junk or bulk email folders.

### **Reporting Module**

The GovDelivery Client Services team will provide high-level monthly summary information on usage of the Digital Communications Platform. Granular reporting metrics, such as per transaction inbound and outbound detail information will be provided upon request.

GovDelivery Digital Communication Platform Reporting includes:

- Usage trend analysis
- Total number of inbound and outbound transactions (by month and YTD)
- Deliverability statistics
- Subscriber growth
- Open and unique link clicks – subscriber interaction

### **Communication Channels**

Alerts sent through GovDelivery can be delivered to subscribers by email, text messaging via SMS, and/or RSS.

#### **Email Messages**

GovDelivery sends both text-based and HTML formatted emails to intended recipients depending on which email software the recipient is set up to receive.

#### **Text Messaging**

Wireless alerts are an optional feature that can be turned on at the discretion of the client for any topic available to citizens for subscription through GovDelivery.

#### **RSS Feeds**

RSS allows riders to view updates in their RSS readers. A small, but growing percentage of the population is embracing this emerging technology. GovDelivery has two methods to offer RSS updates to citizens: Public Feeds and Personal RSS Feeds.

##### **Public RSS Feeds**

GovDelivery makes it easy to publish any topic (for example: news releases) as an RSS feed on a client's website. This is the most common use of RSS today that is implemented on many websites.

##### **Personal RSS Feeds**

Citizens can also opt to receive all of their updates in a single RSS feed during the sign up process within GovDelivery. For example, if a citizen signs up to receive updates on six topics and wants to receive them via RSS, all of those topics can be combined into one RSS feed that they access in the RSS reader of their choice. They can choose to receive updates via e-mail and RSS or RSS only.

## **GovDelivery Standard & Premium Features**

### ***Automated Email Delivery***

GovDelivery operates on proprietary technology that automates workflow by linking website updates to email alert subscription options. The system monitors an organization's website for content updates; website content updates trigger the automation of sending personalized email alerts to interested citizens. The unique approach allows the subscription system to integrate with the City's current website and web publishing process without custom integration or interfering with network security.

### ***Manual Email Sending***

Although government clients primarily use GovDelivery for automated email sending, GovDelivery DSM can also be used to manually send targeted email or text messages even when website updates don't occur. Emails and text messages can be manually created and sent at any time, for one-time issues such as emergencies, event announcements, etc. Content can be delivered directly to the public through email or text message or citizens can be offered a link back to a webpage.

### ***Associated Information Capture – Subscriber Segmenting***

In addition to capturing a subscriber's email address during initial sign up, the City can capture other associated information that it chooses to ask residents at this time. This feature allows the City to segment (target a specific audience) with critical or relevant messages.

This feature allows the City to target email communication based on details defined during setup such as:

- Zip code
- Neighborhood, City, District, etc.
- Interests (e.g. Sending Park & Recreation updates to a specific subscriber group within a geographic area)
- Demographics

### ***Collaboration Network***

The Collaboration Network feature is included with the GovDelivery platform license and allows collaboration of email and text messaging topics to be shared on other GovDelivery client sign up pages to help cross-promote content to riders. As with all of GovDelivery's features, voluntary participation can be adjusted at anytime by either partner or partners.

### ***Collaboration Network Includes:***

- Access to other in-network GovDelivery client subscription topics/content once permission is verified
- One-on-one Client Services support to assist in building your collaboration network partners

### **Advanced Bulletin Editor / E-Newsletter**

The GovDelivery DSM system includes a library of templates for non-technical staff to choose from and customize HTML newsletters. Staff can also build their own custom templates from scratch. Administrators can upload logos, pictures and other images to the templates for easy access and reuse in template formats.

#### **Advanced Bulletin Editor / E-Newsletter Editor includes:**

- Over 25 newsletter templates, with more available in future releases
- Ability to customize the templates by creating unique themes (colors/fonts)
- Ability to customize templates by uploading images and logos to your own library of images
- Custom template save feature for future use.
- Ability to preview and approve newsletter before sending
- Reporting on newsletter open rates

### **Web Services**

GovDelivery provides an expanding set of Web services that allow our clients to further integrate DSM with other back-end applications. Based on SOAP, functions in the API allow programs written in different languages to interact with GovDelivery.

#### **Web Services includes:**

- *Send Bulletin* – Client generates a file containing all the information needed to send a bulletin and passes it to GovDelivery to send through mail-sending platform.
- *Get Bulletin* – By providing a bulletin ID, GovDelivery can return a copy of the bulletin, which can be modified and reset.
- *Synchronize Subscription Tree Topics* – Create, modify, delete and move categories, sub-categories and items, enabling custom presentation of subscription items.
- *Get Subscription Tree* – Retrieves a copy of current subscription tree topics.
- *Synchronize Subscribers* – Automatically passed subscribers from an existing database into a specific GovDelivery topic

### **GovDelivery's Web Services Approach**

GovDelivery DSM implements standard Web services advertised by WSDL (web services definition language). The technical implementation uses standard SOAP calls using HTTP and HTTPS. The Web services are implemented using a library called XFire. GovDelivery recommends using XFire to any client implementing the web service using Java. However, any Web services framework that is capable of reading WSDL and generating a web services call to GovDelivery will be able to use the services. Therefore the system can be implemented in Java, C, C++, .Net, or any other language with a WSDL generator.

For clients that cannot create calls to WSDL directly, GovDelivery offers a command-line driven client that can accept a properly formatted XML file as input and make the web services call. In this case, the client would need to generate an XML file, execute the GovDelivery program, and read the program's output.

### **Unlimited Ongoing Training & Support**

The City of Sacramento will receive unlimited ongoing training and support throughout the contracted use of DCP. GovDelivery will assign a Client Services team to the City of Sacramento that is comprised of 3 specialty groups:

- 1) **Implementation Consultant:** an expert trainer whose main responsibilities are to prepare the client to launch with any new services from GovDelivery within a 60-Day timeframe for internal testing or go live to the public.
- 2) **Technical Support Representatives:** a team of technical staff who are assigned to work with the Implementation Consultant and the City to assist in setting up, launching, and maintaining the solution.
- 3) **Client Success Consultant:** a dedicated resource and first point of contact on all issues. Responsible for implementation support and ongoing success support.

Implementation Consultants, Technical Support Representatives, and Client Success Consultants are available by phone and email to provide technical support during regular business hours: 8:00 AM EST – 5:00 PM PST. In addition, 24-hour emergency phone and email support is available during off-business hours. All support is covered under the monthly fee.

Personalized attention, quick incident response, and ownership of responsibilities drive our Client Services team philosophy, which ensures a successful client experience.

### **Roles & Responsibilities**

GovDelivery and the City of Sacramento each have specific responsibilities to ensure successful implementation and maintenance of the Digital Communications Platform.

#### **City of Sacramento Responsibilities**

The city will provide:

1. One designated project leader who can coordinate the project with GovDelivery
2. The city's best efforts to promote its topics and offerings.

#### **GovDelivery Responsibilities**

GovDelivery will provide all of the services outlined in this proposal. There will be one main point of contact assigned by GovDelivery for the city's staff and that person will be responsible for managing the DCP system to ensure successful implementation and ongoing use of the system. GovDelivery will also provide regular upgrades to the system to stay consistent with the latest technology standards.

GovDelivery will provide marketing assistance to city to promote its service. Marketing assistance includes press release creation, public relations support and marketing templates (flyers, postcards, etc.) All materials are approved by City of Sacramento ahead of time. For more information, contact the marketing department (John Cook, Sr. Director of Marketing, 651-757-4146).

## EXHIBIT B

### PROFESSIONAL SERVICES AGREEMENT

#### FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$95,388
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services as set forth in Attachment 1 to Exhibit B, 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 B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
  - D. Requests for payment shall be sent to:

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:

*City of Sacramento, City Manager's Office  
915 I Street, Fifth Floor, Sacramento, CA 95814  
916.808.5704*

*Attn: Kathy McAllister, Administrative Analyst*

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.

**Attachment 1 to Exhibit B**

**PRICING/FEE SCHEDULE**

GovDelivery proposes the following services described in this document, for the fees listed below. This quote is based on information provided by City of Sacramento and is subject to change if there is a substantive change in requirements.

<b>GovDelivery Description of Services for City of Sacramento</b>	<b>Monthly Fee</b>	<b>Annual Fee</b>
<b>Digital Communication Management Ongoing Service</b>	\$2,741	\$32,892
Automated Distribution of Emails to the Public	\$0	\$0
Unlimited Subscribers	\$0	\$0
Unlimited Subscription Categories	\$0	\$0
Unlimited Distribution of E-Mails from City of Sacramento	\$0	\$0
24x7 Phone and Email Customer Support for Email Services	\$0	\$0
Subscription Usage and Analysis Reporting	\$0	\$0
User Profile Management	\$0	\$0
Regular Technology Upgrades	\$0	\$0
Unlimited Page Watch Monitoring for changes on City of Sacramento's website	\$0	\$0
Secure and Reliable Application Hosting	\$0	\$0
24x7 system access to Tier 3 data center	\$0	\$0
Discounts - One Year 10% Discount	\$2,467	\$29,604
Widgets- Includes 3 free widgets built for the City of Sacramento (For each additional widget there is a \$65 charge per month)	\$0	\$0
Blogs – Includes 3 free blogs for the City of Sacramento (For each additional blog there is a \$100 charge per month)	\$0	\$0
Professional Service Consultation with GovEngage ( <a href="http://govengage.com/">http://govengage.com/</a> )	\$0	\$0
<b>Total</b>	<b>\$2,467</b>	<b>\$29,604</b>

The term for the ongoing monthly services is 12-months. At the conclusion of the 12-month service period, GovDelivery and the City of Sacramento will evaluate the volume usage to make appropriate adjustments in pricing and City of Sacramento will have the option to renew for two additional years at the adjusted fixed price.

**Important Notes**

THE PRICING AND TERMS OF THIS PROPOSAL ARE VALID THROUGH JULY 30, 2012.

\* License allows for information and content owned and authorized by City of Sacramento only.

**EXHIBIT C**  
**PROFESSIONAL SERVICES AGREEMENT**  
**FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall *[check one]*

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

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

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

9. **Term; Suspension; Termination.**

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

(2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

**10. Indemnity.**

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

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less

than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

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

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

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

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

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

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

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

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

B. Additional Insured Coverage

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

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

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

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

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

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

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

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

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **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 the Contract or 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 the Contract or Agreement.

## **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  
Procurement Services Division  
5730 24<sup>th</sup> Street, 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

## 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 24<sup>th</sup> Street, 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.