



# City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 11/15/2011

**Report Type:** Consent

**Title: Agreement: Electronic Campaign Disclosure and Statement of Economic Interests Form Filing Systems**

**Report ID:** 2011-00965

**Location:** Citywide

**Recommendation:** Adopt a Resolution authorizing the City Clerk to execute an agreement with Westcoast Online Information Systems dba NetFile to provide an electronic campaign disclosure statement and statement of economic interests filing system for a total amount not to exceed \$153,625.

**Contact:** Stephanie Mizuno, Assistant Clerk, (916) 808-8093, Office of the City Clerk

**Presenter:** None

**Department:** City Clerk

**Division:** City Clerk

**Dept ID:** 04001011

**Attachments:**

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- 1-Description/Analysis
  - 2-Background NetFile
  - 3-Resolution NetFile
  - 4-Contract Netfile
- 

**City Attorney Review**

Approved as to Form  
Janeth D. San Pedro  
11/7/2011 9:35:05 AM

**Approvals/Acknowledgements**

Department Director or Designee: Shirley Concolino: 11/7/2011 9:35:04 AM



## Description/Analysis

**Issue:** In May of 2007, the Sacramento City Council approved an agreement with Westcoast Information Systems, Inc. dba NetFile for the online electronic preparation and submission of campaign disclosure and statement of economic interests forms. The statement of economic interests form system was not implemented under the previous agreement; however, the City Clerk's Office is now prepared to implement that component. The approvals requested in this report will allow continuance/implementation of those services.

**Policy Considerations:** That the City of Sacramento continue to provide as a customer service, and in compliance with City Code, an electronic system for the filing and research of campaign statements, and to enhance the system with the implementation of electronic statement of economic interest filings.

**Environmental Considerations:** None.

**Sustainability:** It is sustainable to maintain a technology that provides efficiency in producing services and which also provides information quickly and transparently to the public.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** For the City of Sacramento to continue providing an electronic method for filing campaign disclosure statements, and to also provide the same method for filing statement of economic interest forms.

**Financial Considerations:** Funding is available in the City Clerk's operating budget to pay for the services of this agreement.

**Emerging Small Business Development (ESBD):** None.



## **Background:**

City Code Section 2.13.130 [Filing of Campaign Statements - Electronic Format] prescribes that the elected officer, candidate or committee shall file, at the same time as the official statement, a copy of the statement on a computer diskette or other electronic media. The electronic media shall be in a format that is prescribed by the City Clerk.

In May of 2007, the Sacramento City Council approved an agreement with Westcoast Information Systems, Inc. dba NetFile for the online electronic preparation and submission of campaign disclosure and statement of economic interests forms. The statement of economic interests form system was not implemented under the previous agreement; however, the City Clerk's Office is now prepared to implement that component. The approvals requested in this report will allow continuance and implementation of those services.



## RESOLUTION NO.

**Adopted by the Sacramento City Council**

**Adopted on**

### **AGREEMENT WITH WESTCOAST ONLINE INFORMATION SYSTEMS DBA NETFILE TO PROVIDE AN ELECTRONIC CAMPAIGN DISCLOSURE STATEMENT AND STATEMENT OF ECONOMIC INTERESTS FORM 700 FILING SYSTEM**

#### **BACKGROUND:**

- A. The City of Sacramento is currently under contract with Westcoast Information Systems, Inc. to provide an electronic campaign disclosure statement system. The terms of the services provided in the contract are set to expire on June 30, 2012.
- B. The City of Sacramento desires to continue providing electronic filing for campaign disclosure statements.
- C. The City of Sacramento desires to enhance the system to provide for the electronic filing of statement of economic interests forms.

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

- Section 1. The City Clerk is authorized to execute an agreement with Westcoast Online Information Systems dba NetFile for setup and maintenance services for the electronic campaign disclosure and statement of economic interests form filings system in an amount not to exceed \$34,625.
- Section 2. The agreement provides for an option to renew annual maintenance services for additional four one-year terms for an annual amount not to exceed \$29,750, and a total contract amount not to exceed \$153,625. The City Clerk may authorize such renewals for the annual not to exceed amount provided that sufficient funds are available in the budget adopted for the applicable Fiscal Year(s).



PROJECT #: N/A  
 PROJECT NAME: Electronic Campaign Disclosure and Form 700 System  
 DEPARTMENT: City Clerk's Office  
 DIVISION: N/A

**CITY OF SACRAMENTO**

**PROFESSIONAL SERVICES AGREEMENT \***

**THIS AGREEMENT** is made at Sacramento, California, as of \_\_\_\_\_ 2011, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*Westcoast Online Information Systems, Inc. DBA NetFile  
 2707 Aurora Rd, Mariposa, CA 95338  
 Phone: 209.742.4100 / Fax: 209.391.2200*

("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.

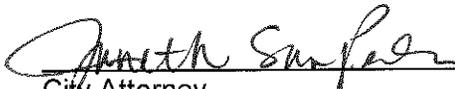
**CITY OF SACRAMENTO**  
A Municipal Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED TO AS FORM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Attachments

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

**CONTRACTOR:**

NetFile  
NAME OF FIRM

77-0489514  
Federal I.D. No.

442-2505-0  
State I.D. No.

151955  
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: \_\_\_\_\_*)



**Signature of Authorized Person**

Tom Diebert, Vice President  
Print Name and Title

N/A  
Additional Signature (*if required*)

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

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: NetFile

Address: 2707 Aurora Rd, Mariposa, CA 95338

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.

Tom Diebert  
Signature of Authorized Representative

10/26/11  
Date

Tom Diebert  
Print Name

Vice-President  
Title

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

**1. Representatives.**

The CITY Representative for this Agreement is:

**Stephanie Mizuno, Assistant City Clerk**  
**Historic City Hall**  
**915 I Street, Rm. 116**  
**Sacramento, CA 95814**  
**Ph. (916) 808-8093 / Email. smizuno@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:

**Tom Diebert, Vice-President NetFile**  
**2707 Aurora Rd, Mariposa, CA 95338**  
**Ph. (559) 434-2045 / Fax (209) 391-2200**  
**E-mail: diebert@netfile.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  [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 Consultants 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 Consultant;
- (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, CONSULTANT 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, CONSULTANT 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.

Initial services to set up the SEI Form 700 and Form 800 Systems as described herein shall be provided for the period January 1, 2012 to June 30, 2012.

The annual services for the SEI 700 System, Form 800 System, and Agency Form 460 System herein shall be provided for the period July 1, 2012 through June 30, 2013. This agreement shall automatically renew for four (4) annual terms starting July 1, 2013 under the same terms and conditions as this Agreement, unless written notice of non-renewal is given by either party at least 30 days prior to the start of the next renewal period.

## **Attachment 1 to Exhibit A**

### **Scope of Services**

The proposal from CONTRACTOR includes the FPPC Form 460 e-filing, administration, and public site; the FPPC Form 700 Statement of Economic Interests System e-filing, administration, and public site; and the FPPC Form 800 administrative management, publication and public site. All systems are described in detail below:

CONTRACTOR shall provide online hosting of Campaign Disclosure FPPC Form 460, Statement of Economic Interests FPPC Form 700, and FPPC Form 800 series, and shall perform the following services:

#### **A. Expected Outcome**

CONTRACTOR will develop, implement and maintain a system that permits the CITY and users authorized by the CITY to (1) file FPPC Campaign Disclosure Forms in the CAL electronic format, with these documents to be available (in redacted form) for public viewing over the Internet through a link on the CITY's website; (2) maintain a database of the FPPC Campaign Disclosure Forms to track filings and generate filing deadline and amendment letters and (3) allow the CITY to scan reports not submitted electronically.

CONTRACTOR will develop and maintain a system that permits the CITY and users authorized by the CITY (up to 800 filers annually) to (1) file FPPC Form 700 Statement of Economic Interests in electronic format to be available in redacted form for public viewing of documents over the Internet through a link on the CITY's website; (2) maintain a database of the FPPC Form 700 forms to track filings and generate filing deadline and amendment letters; and, (3) allow the CITY to scan reports not submitted electronically. If the CITY exceeds 800 filers for the FPPC Form 700, there will be an additional charge of \$250 per quarter for every 100 filer increment above the 800 annual filers.

CONTRACTOR will develop and maintain a system that permits the CITY and users authorized by the CITY to file FPPC Form 800 series forms for public viewing over the Internet through a link on the CITY's website.

#### **B. Service Details**

1. For the time outlined in the scope of services, and starting from the date of Council approval of this agreement, CONTRACTOR will develop, implement and maintain a system that:

##### **a) For FPPC 460 Filers Using the Internet:**

i. Allows the CITY to provide to Filers who have their own access to the Internet, a user ID and password which is used to log on to a secure site hosted on CONTRACTOR's web server but accessible via the CITY's web site.

ii. Allows Filers who have their own access to the Internet, to log on to, enter data in, and upload to CONTRACTOR's secure site electronic formats of FPPC Campaign Disclosure Forms in the CAL format used by the California Secretary of State.

iii. Once the FPPC Campaign Disclosure Form has been uploaded, CONTRACTOR's secure site validates the submitted filing and notifies the Filer that the filing was accepted or, if declined, explains why the filing was declined.

iv. Allows Filers to print a copy, using Adobe Acrobat Reader, of the FPPC Campaign Disclosure Form that was generated from their upload to CONTRACTOR's secure site.

v. Allows Filers to access their earlier validated electronically filed FPPC Campaign Disclosure Forms.

**b) For FPPC 700 Filers Using the Internet:**

i. Allows the CITY to provide to Filers who have their own access to the Internet, a user ID and password which is used to log on to a secure site hosted on CONTRACTOR's web server but accessible via the CITY's web site. A self registration feature will be available where the CITY will input basic filer information and filer is then instructed to go to a website and register themselves (this is where they will receive their password). Filers will have the capability to enter data and upload to CONTRACTOR's secure site electronic formats of FPPC Form 700 Statement of Economic Interests and/or amendments specified by the California Fair Political Practices Commission. Once the FPPC Form 700 Statement of Economic Interests Form has been uploaded, CONTRACTOR's secure site validates the submitted filing and notifies the Filer that the filing was accepted or, if declined, explains why the filing was declined.

ii. Allows Filers to print a copy, using Adobe Acrobat Reader, of the FPPC Form 700 Statement of Economic Interests Form that was generated from their upload to CONTRACTOR's secure site.

iii. Allows Filers to access their earlier validated electronically filed FPPC Statement of Economic Interests Forms.

**c) For FPPC 460 CITY Staff:**

i. Allows uploading to CONTRACTOR's secure site of FPPC 460 Campaign Disclosure Forms submitted to the CITY in the current production version of the CAL format.

ii. Allows tracking of Filers and all FPPC Campaign Disclosure Forms in a database.

iii. Allows CITY to scan redacted FPPC Form 460 hard copy filings for posting to the online searchable database.

iv. Allows CITY to scan un-redacted FPPC Form 460 hard copy filings for posting to the internal searchable and kiosk mode database.

v. Retention of all data created in the system is provided for the duration of the contract. Data can only be deleted or archived by CONTRACTOR, if and when given expressed prior written authorization by the CITY.

**d) For FPPC 700 CITY Staff:**

i. Allows CITY to scan both redacted or un-redacted FPPC Form 700 filings for posting to the online searchable database.

ii. Department level admin for CITY (or those otherwise designated) will be available where each identified department head (or those otherwise designated) would manage their department's filers' information. CITY reserves the right to add administrative users as it deems necessary.

iii. Filer status reports and correspondence logs are included in the system.

iv. Paper copies generated from e-filing will have embedded code that staff will input into the system to confirm receipt of the paper filing. Filers who are 87200 filers will have an additional identifier so staff recording filing can immediately identify the paper as an 87200 filer.

v. System will be able to identify Level 1, 2, 3, 4, and 5 filers. The CITY will have the ability to determine which level(s) will be available for public and/or internal viewing in either redacted or un-redacted form (with only redacted forms available to the public).

vi. Retention of all data created in the system is provided for the length of the contract period. Data can only be deleted or archived by CONTRACTOR, if and when given expressed prior written authorization by the CITY.

vii. Basic filing disposition reports as well as CITY defined reports are included in system at no additional cost.

**e) For All FPPC forms uploaded to CONTRACTOR's Secure Site:**

i. For the FPPC Form 460 the system produces two versions in .pdf format of the FPPC Campaign Disclosure Form: one version, not accessible by the public, will include all information as filed; the other version, accessible by the public, will have all street addresses blocked from view.

ii. For the FPPC Form 700 the system produces two versions of the FPPC Form 700 in .pdf format: one version, not accessible by the public, will include all information as filed; the other version, accessible by the public, will be redacted.

**f) For the Public:**

i. Allows the public to search and view electronically filed documents (with street addresses blocked from view on the FPPC Form 460) over the internet and for the FPPC Form 700 view the redacted version of the filing.

ii. If a document was not available electronically, CONTRACTOR's secure site will notify the searcher that the document is available for viewing in the office of the CITY.

**g) Contractor's system will, among other things:**

i. Issue and ID number and password for Filers.

ii. Grant user access and security levels for CITY staff.

iii. Store and edit all filings by individual statement periods.

iv. Allow for entry of miscellaneous notes by CITY staff.

- v. Generate notification letters telling the filers for the upcoming filing deadline.
- vi. Indicate how filings were received.
- vii. Track deadlines for filings and amendments and generate letters notifying Filers of delinquencies.
- viii. Track delinquencies and generate letters notifying Filers of fines where applicable.
- ix. Merge applicable information from the database to enable printing of the various letters.
- x. Allow the public to search and view the un-redacted electronic filings on the computer terminal provided by the CITY located in their office.
- xi. Allow the public to search and view the CITY's approved list of redacted electronic filings via the Internet.

**h) Contractor will also:**

- i. Help import current Filers' filings into database. Manipulation or creation of this data may be required by staff of the CITY before import can occur.
- ii. Once import is uploaded, the CITY will need to check the integrity of the data in an initial cleanup.
- iii. Provide unlimited support to the CITY staff by email or phone during CONTRACTOR's normal working business hours for the duration of the AGREEMENT term. In addition, CONTRACTOR shall maintain after hour telephone support for CITY staff for the duration of the AGREEMENT term.
- iv. Provide training to the CITY for initial implementation as well as ongoing training services as needed.

**C. Intellectual Property**

All intellectual property, including existing source code or additional source code written for the purpose of developing this system for the CITY, will be the sole property of CONTRACTOR. If CONTRACTOR were to cease operations during the contractual period, CONTRACTOR would provide to the CITY all source code relative to the CITY's system. All data created in the system by the CITY or authorized users as designated by the CITY is the property of the CITY.

**D. Limitation of Liability**

The maximum liability to either party and its licensors, if any, under this agreement, or arising out of any claim by the CITY related to CONTRACTOR's services, products, equipment or software for direct damages, whether in contract, tort or otherwise, shall be limited to the total amount of fees collected by CONTRACTOR from the CITY hereunder for the 12 months prior to the time the cause of action giving rise to such liability occurred. In no event shall CONTRACTOR or its licensors be liable to the CITY for any indirect, incidental, consequential, or special damages related to the use of CONTRACTOR's services, products, equipment or software or CONTRACTOR's failure to perform its obligations under this agreement, even if advised of the possibility of such damages, regardless of whether

CONTRACTOR or its licensors are negligent. The limitation of liability specified in this section D shall not apply to claims arising out of or related to third party claims that the software infringes intellectual property rights. For all third party claims caused by or arising from CONTRACTOR's negligence or willful misconduct, CONTRACTOR's maximum per incident liability shall be limited to the insurance amounts specified in this Agreement.

**E. Set Up and Programming of SEI Form 700 and Form 800 Components:**

The performance for the SEI Form 700 System timeline is based on Council approval of this agreement no later than November 15, 2011. The timeline would be as follows:

- November 15, 2011: CITY to send data disk of historical data for filers to CONTRACTOR.
- November 15, 2011: CONTRACTOR to have web graphics applied to system for CITY to review.
- December 15, 2011: CONTRACTOR to have historical data for filers uploaded into system.
- January 15, 2011: Administration training 700 system to begin.
- January 23, 2012: Filer training to begin.
- February 6, 2012: SEI Form 700 system ready for e-filing.

The Agency Form 460 System (online campaign disclosure statement filing), SEI Form 700 System (statement of economic interests filing) and Form 800 System (gift and behest filing) shall be provided. The CONTRACTOR has provided the CITY with the Agency Form 460 System since May of 2007. The SEI Form 700 System and Form 800 System is an enhancement to the existing service.

## 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 \$153,625.00 as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
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:

**Sacramento City Clerk's Office  
Stephanie Mizuno, Assistant City Clerk  
Historic City Hall  
915 I Street, Rm. 116  
Sacramento, CA 95814  
Phone: 916-808-8093 / Email: [smizuno@cityofsacramento.org](mailto:smizuno@cityofsacramento.org)**

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

### Cost of Services

#### SEI FORM 700 SYSTEM:

The cost of services for the set up and initial deployment of the SEI Form 700 System is \$4,875.00 for the period of January 1, 2012 through June 20, 2012.

#### ANNUAL COST SERVICE TOTAL:

The annual cost of services for the Agency Form 460 System, SEI Form 700 System and Form 800 System is \$29,750.00 per year (\$148,750.00 for five years).

#### COST SERVICE BREAKDOWN:

**Agency Form 460 System** - \$20,000 per year. This system provides for the e-filing, managing, and public viewing of FPPC Form 460 filings over the Internet

**SEI Form 700 System** - \$9,750 per year. Rate based on 800 maximum filers annually. For every additional 100 filers beyond the base, the quarterly rate increases by \$250. Additional filers are not anticipated. This system provides for the e-filing, managing, and public viewing of FPPC Form 700 Statements of Economic Interest filings over the Internet.

**Form 800 System** – Included in SEI Form 700 System. This component provides for the administrative management, publishing and public viewing of FPPC Form 800 filings over the Internet.

Invoices for implementation of the SEI Form 700 System will be invoiced upon installation pursuant to the schedule for the period of January 1, 2012 to June 30, 2012. Invoices for the Agency Form 460 System will be invoiced annually on June 30 and due July 31 of the same year.

In addition to the CONTRACTOR's Compensation shown in Item 1 of Exhibit B, any additional work done by the CONTRACTOR that is not covered in this agreement may at the discretion of the CONTRACTOR be billed at a rate of \$250 per hour. No billing will be made by CONTRACTOR without prior written approval of CITY via approval of an executed Supplemental Agreement as outlined in Exhibit B, Section 5 [Additional Services].



## 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 consultant 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 consultant, 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 with the exception of the following: all intellectual property, including existing source code or additional source code written for the purpose of developing this system for the CITY, will be the sole property of CONTRACTOR. 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. Either party 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. Either party 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:

X 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 directly 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.