# RESOLUTION NO. 2011-673

Adopted by the Sacramento City Council

December 13, 2011

## AGREEMENT: TOW SERVICES

**BACKGROUND**

A. The Sacramento Police Department (SPD) and the Community Services Department's (CDD) current tow services agreements will expire on December 31, 2011.

B. On October 1, 2011, the SPD issued a Request for Proposals (RFP) (RFP #P121141001) for tow services through December 2014.

C. The SPD received 32 tow services proposals. Thirty (30) tow services providers were selected after an evaluation process and a facility site inspection. Additional tow companies will be added, if necessary, through the duration of the agreements.

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

Section 1. The City Manager, or the City Manager's designee, is authorized to execute a tow services agreement with thirty (30) contractors from January 1, 2012 to December 31, 2012 with two (2), one (1) year options to renew through December 31, 2014.

Section 2. The City Manager, or the City Manager's designee, is authorized to execute additional rotational tow services agreements with contractors in future open enrollment periods through December 31, 2014.

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Exhibit A-List of Selected Tow Contractors
Exhibit B-Nonprofessional Services Agreement

Adopted by the City of Sacramento City Council on December 13, 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

## List of Selected Tow Contractors

A1 Towing
601 1st Avenue
Sacramento, CA 95818

All Valley Towing
4585 Pell Drive, #B
Sacramento, CA 95838

Andrews 24-Hour Towing
6120 27th Street
Sacramento, CA 95822

Arena Tow
7825 Cucamonga Avenue
Sacramento, CA 95826

Arnold's Towing
1429 Auburn Boulevard
Sacramento, CA 95815

Budget Towing
2968 Del Paso Boulevard, #4
Sacramento, CA 95815

Cal-Expo Towing
1511 Silica Avenue
Sacramento, CA 95815

Capitol City Tow
5741 Florin Perkins Road
Sacramento, CA 95828

Central Valley Towing
8240 14th Avenue
Sacramento, CA 95826

Cheaper Towing, Inc.
8186 Elder Creek Road
Sacramento, CA 95824

Chimas Tow & Automotive
1952 Auburn Boulevard
Sacramento, CA 95815

College Oak Towing
8590 Fruitridge Road
Sacramento, CA 95826

Cozz's Tow & Transport
3800 Power Inn Road
Sacramento, CA 95826

Dan's Mission Towing
8534 Thy's Ct.
Sacramento, CA 95828

Dollar Towing
4350 Pell Drive, #130
Sacramento, CA 95838

Eagle Towing, Inc.
8260 Alpine Avenue, #A
Sacramento, CA 95826

Ed & Son's Towing
2541 Land Avenue, #300
Sacramento, CA 95815

G & R Towing
8140 36th Street
Sacramento, CA 95824

Golden State Towing
2751 Land Avenue, #A
Sacramento, CA 95815

Hirst Towing
1710 Auburn Boulevard
Sacramento, CA 95815

International Tow
5750 Franklin Boulevard
Sacramento, CA 95824

Johnnie's Tow and Body
5755 35th Street
Sacramento, CA 95824

LJ's Towing
2525 Connie Drive
Sacramento, CA 95815

Natomas Towing
271 Opportunity St., #H
Sacramento, CA 95838

Ramos Towing
6290 Warehouse Way
Sacramento, CA 95826

Rincon Towing, Inc.
1762 Santa Ynez Way
Sacramento, CA 95816

Sam's Towing
7840 14th Avenue
Sacramento, CA 95826

Shanahan's Tow
6211 Power Inn Road
Sacramento, CA 95824

Sierra Hart Towing
600 Sunbeam Ave., #6
Sacramento, CA 95814

Sierra Towing
8540 Elder Creek Road
Sacramento, CA 95828

CITY OF SACRAMENTO

**NONPROFESSIONAL SERVICES AGREEMENT**

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

*Name of Contractor*
*Address*
*Phone/Fax*

("CONTRACTOR"), who agree as follows:

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

| | |
|---|---|
| Invitation to Bid | Workers' Compensation Certificate |
| Instructions to Bidders | Contractor's Bid Proposal Form |
| Certificate(s) of Insurance | ESBD Program Statement |
| Drug-Free Workplace Policy and Affidavit | Technical Specifications |
| Declaration of Compliance (Equal Benefits Ordinance) | |
| Declaration of Compliance (Living Wage Ordinance) | |

2. **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 therefore. 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.

3. **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.

4. **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.

5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefore, the General Provisions shall control over said terms or conditions.

6. **Living Wage Requirements.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.58, Living Wage. The requirements of Sacramento City Code Chapter 3.58 are summarized in Exhibit E. The CONTRACTOR is required to sign the attached Declaration of Compliance (Living Wage Ordinance) to assure compliance with these requirements.

7. **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 F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

8. **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.

9. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**
A Municipal Corporation

By:_____

Print name:_____
Title:_____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachments

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

**CONTRACTOR:**

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

_____
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**

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

**DECLARATION OF COMPLIANCE**
**Living Wage Ordinance**

Name of Contractor: _____

Address: _____

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

1. Contractor has read and understands the Living Wage Requirements (the "Requirements") attached hereto as Exhibit E.

2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Living Wage Ordinance codified at Chapter 3.58 of the Sacramento City Code (the "Ordinance"). If required by the Ordinance, Contractor will pay not less than the minimum compensation specified in the Ordinance to Contractor's employees, for all time spent performing any work under this Contract.

3. If the amount of this Contract is less than $100,000, as a condition of receiving this Contract, Contractor will notify the City of Sacramento ("City") in writing if the aggregate value of this Contract and of any other Nonprofessional Services contract(s) covered by the Ordinance that the City has awarded to Contractor within the previous 12 months, is $100,000 or more.

4. Contractor acknowledges and agrees that the Requirements, the Ordinance and this Declaration shall constitute part of this Contract, and that these provisions shall govern in the event of any conflict with any other provisions of the Contract.

5. Contractor further acknowledges and agrees that any violation of the Requirements or the Ordinance constitutes a material breach of this Contract, and that, if such a breach occurs, the City will be authorized to terminate the Contact, and pursue all available legal and equitable remedies.

6. If requested by the City, Contractor will promptly submit certified payroll records to the City, for itself and/or for Contractor's subcontractor(s), as requested by the City, and Contractor will take any other steps as may be required by the City to determine whether Contractor's subcontractor(s) or Contractor have complied with the Requirements and the Ordinance.

7. Contractor will require all of its subcontractors who are covered by these requirements to comply with the Requirements and any additional requirements that may be specified in the Ordinance, and Contractor will include these requirements in all subcontracts covered by the Ordinance.

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 the Ordinance by Contractor or by any subcontractor retained to perform work or provide services under this Contract.

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.

_____ Date: _____
Signature of Authorized Representative

Print name: _____
Title: _____

**DECLARATION OF COMPLIANCE**
**Equal Benefits Ordinance**

Name of Contractor: _____

Address: _____

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

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.

2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento 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 Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.

g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).

h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.

5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of $50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

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

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

# SCOPE OF WORK

## EXHIBIT A

## NONPROFESSIONAL SERVICES AGREEMENT

## SCOPE OF SERVICES

The CITY Representative for this Agreement is:

Sacramento City Police Department
Tow Program Administration Office
Attention: Tow Administrator
5770 Freeport Blvd., Suite #100
Sacramento, CA 95822-3516
tow-administrator@pd.cityofsacramento.org
Telephone: (916) 808-0585
Fax: (916) 808-0707

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

The CONTRACTOR Representative for this Agreement is:

*Name/Title*
*Address*
*Phone/Fax/E-mail*

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

## 1. DESCRIPTION OF TERMS

A. Base Services – Any service or tow which is performed when the vehicle operator or agent is present and the vehicle is not stored at the direction of an officer.

B. Chief of Police – For the purpose of this contract, the Chief of Police of the City of Sacramento Police Department shall refer to him/her or a designee.

C. Certificate of Secretary – A document that authorizes someone to sign legal contracts on behalf of a corporation. This Certificate is normally signed by the corporate secretary.

D. City – City of Sacramento

E. Contractor – The company with which a contract is established to provide the services described in the RFP.

F. Load Salvage Operations – Any operation involving the recovery of a load which has been spilled, or the off-loading and reloading of a load from an overturned vehicle performed in order to upright the vehicle. This will usually be limited to operations involving Class B, C, and D tow trucks.

G. Portal to Portal – Service shall start at the time of departure from the place of business or point of dispatch, whichever is closer to the location of the call, and shall end at the estimated time of return to the place of business or the completion of the call, if another call is pending, whichever is shorter. Return to place of business includes a reasonable and verifiable amount of time required to place the tow truck back into service when unusual circumstances require additional time that are not part of normal operating procedures. Examples:

- 4X4 recovery in the mud: reasonable to charge for cleaning mud from truck and equipment;
- Reasonable to charge for cleaning burn debris from carrier bed;
- Car towed leaves mud track on bed of carrier: not reasonable to charge for cleaning of carrier bed.

For the purpose of this Contract, "Portal to Portal" shall also mean "Portal to End of Service."

H. Possession – Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun.

I. Proposer – A firm which proposes to provide towing services as described in the RFP.

J. Public Safety Response – A response which results in storage of a vehicle at the direction of an officer. This does not include storage at the request of the vehicle operator, registered owner, or agent.

K. Response Time – The period of time from a Contractor's notification by the City of Sacramento's designated employee to the arrival of the tow truck at the location requested.

L. Retail Rate – The customary rate charged by an operator to individual retail customers. This is the competitive rate a company has posted in the office and quotes over the phone.

M. Operations – Those towing/recovery procedures which require Class B, C, or D tow trucks and/or unique equipment. Examples of unique equipment include, but are not limited to: forklifts, low beds, air bags, special dollies and trailers, fuel pump off systems, helicopters, etc.

N. Suspension – The temporary removal of a Contractor from both rotation lists for a specific period of time during the term of the Tow Services Contract. See Attachment G, Nonprofessional Services Contract, Exhibit D, Section 9.

O. Termination – The permanent removal of a Contractor from both rotation lists for the remainder of the term of the Tow Services Contract. See Attachment G, Nonprofessional Services Contract, Exhibit D, Section 9.

P. Tow Review Committee – A committee of three (3) persons to be appointed by the Chief of Police to hear appeals of discipline imposed pursuant to this contract. The committee shall consist of one member of the Sacramento Police Department, one member of the public who is not affiliated with any tow company, and one contractor from the Tow Services Contract who is not in the same tow district as the subject of discipline.

Q. Tow Truck – As defined in Section 615 of the California Vehicle Code, a vehicle which includes slide back carriers and wheel lift vehicles. A "trailer for hire" shall not be approved for listing as a Class A tow truck.

R. Vehicle Recovery Operation – An operation involving the process of up-righting an overturned vehicle or returning a vehicle to a normal position on the roadway which requires the use of auxiliary equipment due to the size or location of the vehicle. This will usually be limited to operations requiring a Class B, C, or D tow truck(s).

## 2. RATES, CHARGES AND FEES

A. Towing and Storage Rates - Effective January 1, 2012, the maximum rates charged and the fee paid to the City in connection with any event pursuant to this Agreement, are as follows:

1. For class A tows, the Contractor will charge the vehicle owners no more than the rate of $180.00 per tow, on public safety response calls with a one hour minimum. Charges in excess of one hour will be charged in no more than one (1) minute increments.

2. The total fees charged for after hours release shall be no more than one-half (1/2) the current hourly rate of $180.00 per hour, and shall only be allowed if there is no person on duty at the storage facility for release and a call back is required outside normal business hours. Charges shall be based on a daily rate, notwithstanding State law requirements which indicate that no charge exceeding that for one day of storage will be made if, within 24 hours after the vehicle is placed in storage, a request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle in placed in storage, charges may be imposed on a full calendar basis for each day, or part thereof. The daily rate extends from midnight to midnight.

3. Storage fees for passenger vehicles, vans, and light trucks shall be no more than $50.00 per day. Operators will store vehicles inside if specifically requested to do so by the Police Department or the owner of the vehicle.

4. Fees listed above, plus lien processing fees described in the California Vehicle Code, proposed/actual non-skilled contract labor, special equipment (For class B, C, and D tows only) and rental/skilled labor mark up are the only fees allowed. Additive fees for postage, cleanup, lockout, use of dolly, etc are not authorized.

B. Contract Administration Fee - The Contractor agrees to pay to the City a non-refundable fee of $25.00 per tow rotation referral, including service calls. This fee shall only be applicable to those tows obtained from the Police rotation list, regardless of class or type; this fee is not applicable to the tows from the Code Enforcement rotation list, regardless of class or type.

C. Storage – Storage shall commence at the time the vehicle arrives at the storage facility. Charges shall be based on a daily rate, notwithstanding State law requirements which indicate that no charge exceeding that for one day of storage will be made if, within 24 hours after the vehicle is placed in storage, a request is made for the release of the vehicle. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar basis for each day, or part thereof. The daily rate extends from midnight to midnight.

D. Contractor Billing and Rates – The contractor shall bill the registered owner of the vehicle towed by the contractor in accordance with the Tow Services Contract. No vehicle towing or storage charges shall be charged until the vehicle is hooked up to the tow truck AND in transit. The contractor shall not charge the City of Sacramento or the owner of any vehicle towed pursuant to

this Contract more than the rates set forth in this Tow Services Contract. All billing will be done in good faith; all efforts to locate the most current registered owner will be exhausted at the contractor's expense.

E. After Hours Release of Vehicles – Rates specified in Scope of Work, Section 2(A)(2).

F. How Tow Rates are Charged – The contractor shall base towing charges upon the class of vehicle being towed regardless of the class of truck used, except when vehicle recovery operations require a larger class truck.

G. Services Performed – The contractor shall charge for services pursuant to the agreed-upon rate schedule. Whenever services are requested, which are not covered by the Tow Services Contract, the contractor shall advise the City or the requesting party of the estimated cost of the service before it is performed.

H. Overcharging – Overcharging for any tow service shall be cause for suspension. The suspension will remain in effect until the Contractor has presented proof to the Chief of Police that reimbursement(s) have been made to the aggrieved customer(s). In addition, the contractor shall be assessed a penalty of $100 for each instance of an overcharge. Three (3) violations of this section within any twelve (12) continuous months shall result in up to a thirty (30) day suspension from both tow lists.

I. Invalid Tow - In the case of an invalid tow or similar instance where the Sacramento Police Department elects to pay for the towing and storage of a vehicle, the contractor will bill the Department and not require pre-payment by the vehicle owner before releasing the vehicle.

## 3. SPECIAL OPERATIONS

A. Class B, C, or D Operations – The contractor shall submit his/her proposed rates for towing, storage, and special operations. Fees shall be reasonable and consistent with industry standards for similar operations. Charges in excess of one hour shall be charged in one (1) minute increments. For Class B, C, and D vehicles which are unclaimed or unsold at lien, the contractor may submit an invoice with a copy of the junk slip showing delivery to a salvage yard. In this case, the Department will pay one-half of towing and up to 17-days of storage at one-half the submitted bid rate for the applicable class of vehicle. In addition, the Department will pay a disposal fee as bid in the RFP. This fee is intended to reimburse the contractor for expenses resulting from dismantlement, special handling, and disposal of the salvaged vehicle.

(1) Hourly rates shall be established for the following:

- Auxiliary Equipment, e.g., airbags, converter gear/dolly, additional trailers or any other type of auxiliary equipment;
- Contracted Equipment, e.g., airbags, converter gear/dolly, additional trailers, forklifts, scoop loaders, or any other type of contracted equipment;
- Contract labor, skilled and unskilled.

(2) Fees - The Chief of Police shall determine the reasonableness of the fees for these types of operations, based upon the average of the proposed fees submitted and a comparison to industry standards for similar operations. The formula for determining the reasonableness of rates for special operations consists of averaging the rates submitted by qualified proposers for Class B, Class C, and Class D. Fifteen percent (15%) will be added to the average of

each of the rates. Rates submitted that exceed the one-hundred and fifteen percent value (115%), in any of the tests, will be considered to be excessive or unreasonable, and the proposal for those rates will be rejected. Those offerors whose pricing is determined to be "unreasonable" in accordance with the above listed procedure, shall be offered the opportunity to submit "Best and Final" pricing. Proposers will be allowed once to resubmit disapproved rates for special operations. Disallowed rates submitted for special operations shall not disqualify the contractor from conducting Class A towing/storage for the City.

(3) Mark Up Rate - The Contractor shall submit a mark up rate (percentage of the cost to the operator) for retail equipment and specialized labor not otherwise listed on the application. If contractor performs a service for which a required rate was not submitted to, and approved by the City, the contractor shall only be entitled to charge for the actual cost of that service. Example: contract labor rate not submitted; the contractor may only charge for the actual rate paid for the labor.

(4) Schedule of Rates - The approved schedule of rates charged by the Contractor shall be available in the tow truck and carried by all drivers at all times, and shall be presented upon request to the person(s) for whom the tow services were provided, or his or her agent, any Sacramento Police Officer or Code Enforcement Officer, and any citizen within Sacramento. An adequate supply of these copies will be maintained at all times. These handouts will be the same as those listed in Scope of Work, Section 4(H).

(5) Rate Requirements - Represent the maximum a contractor may charge on a City call. A contractor is not precluded from charging less when deemed appropriate by the contractor. These requirements shall not be construed as requiring a charge when a contractor would not normally charge for such service. No contractor, or his/her employee or agent, shall refer to any rate as the minimum required by the City.

(6) Rotation Tow Lists - Nothing shall prohibit a class B, C, or D operator from maintaining a place on a lighter class rotation tow list, provided the tow truck meets the equipment specifications for that class of operation.

B. Evidence Impound Tow – The City has only one (1) contractor for evidence impound tows and no other rotation tow contractor should maintain custody over these vehicles at any time. On rare occasions, an officer impounds a vehicle for evidence and a rotational tow is dispatched. If this happens, ensure your drivers and other employees take special notice if the tow form is coded 22655.5 CVC. If discovered by your driver on scene they must notify the Officer on scene that your company is not authorized to handle evidence impounds. Contractor shall inspect every tow on scene or within twenty-four (24) hours of each tow dispatch call to verify that the authority on the tow is not 22655.5 CVC – Evidence Impound. If any vehicle is towed for 22655.5 CVC, Contractor shall contact the Sacramento Police Department Vehicle Crimes Unit at (916) 808-0520 on the same business day, or within the next business day if towed after regular business hours. Failure to meet the above requirements shall result in disciplinary action as detailed in Scope of Work, Section 11(A) and full financial responsibility for all tow and storage fees for each violation.

If it is determined that a vehicle is to be retrieved for any evidence purpose, the evidence impound tow company will respond immediately to pick up the vehicle, 24 hours a day / 7 days a week, from any rotation tow company covered by this contract. Nothing shall prohibit the original tow company from allowing the immediate pick-up of any vehicle that has been changed to evidence impound. All associated tow fees incurred at the original tow company will remain with that company. The evidence impound tow company shall not be responsible for advance payment of any fees to the original rotation tow company.

Once the evidence impound is concluded, the vehicle shall be released to the original tow company and their fees resume from that date forward. It is the originating tow companies' discretion to accept delivery of the vehicle after the evidence impound is concluded. If delivery is declined, all tow fees associated with the original tow are forfeited and the vehicle remains with the evidence impound tow company.

## 4. FACILITY REQUIREMENTS

A. Primary Business Office and Storage Yard Locations – The contractor shall maintain its primary storage yard within the Sacramento City Limits. Nothing in this section will prohibit a contractor from operating a secondary storage facility approved by the Sacramento Police Department within two (2) air miles of the closest Sacramento City boundary, providing the contractor provides transportation, at no cost, to any secondary facilities for vehicle releases. Vehicles are to be towed to a primary location. Only overflow vehicles which are unlikely to be claimed by their owners are to be towed to a secondary location. As space opens up at the primary yard, all vehicles that are likely to be released will be moved to that location from any secondary storage yards, priority will be given to all theft recovery vehicles. The contractor may not impose any additional fees or charges for storage at a secondary location.

(1) Code Compliance - In addition to the provisions herein, the primary and secondary locations shall comply with all Sacramento City Codes - Title 17.24.050 - Footnote 39, Towing Service/Vehicle Storage Yard.

(2) Address Change Notification - The contractor must notify the City of any change in his/her primary or secondary storage location or business office at least thirty (30) days in advance of the actual change in location. If the contractor fails to provide proper written notice, he or she will be suspended from the Tow Services Contract until the new location is approved by the Sacramento Police Department. All new locations are subject to all facility requirements contained in this contract. Facility inspections may be conducted at any time for contract compliance.

(3) Proof of Occupancy - The contractor shall provide the City with a copy of any lease, including any modifications or extensions, for contractor's primary and secondary storage locations(s) or business office(s), if applicable. In the event the property is owned outright, provide a copy of the most recent property tax bill. If the Contractor fails to provide a copy of any lease, modification or extension, then he/she will be suspended from the Tow Services Contract until a copy is received by the City.

B. Physical Characteristics – The primary office shall be large enough to accommodate necessary personnel and administrative records. Contractor shall provide a public, permanent restroom facility, either unisex or separate, and a public indoor or covered outdoor waiting area to seat at least four (4) people. Restroom facilities shall be maintained in a functional, clean and orderly fashion.

C. Public Safety – All adequate measures shall be taken to protect the safety of the public.

D. Access – The public shall have direct, unabated access to the inside of the office waiting area.

E. Capacity – The capacity of the primary location storage must total not less than thirty (30) accessible parking spaces for use in connection with this contract, measuring a minimum of eighteen (18) feet by ten (10) feet for each space.

F. Business Hours - Normal business hours shall not be less than 8:00 a.m. to 5:00 p.m., Monday through Friday, except for the following City recognized holidays: New Year's Day, Martin Luther King, Jr. Day, George Washington's Birthday, Cesar Chavez's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, day after Thanksgiving, and Christmas Day.

G. Signage – Contractor must meet following signage requirements at all times.

(1) The contractor shall display in plain view at all cashier stations, a sign as described in Section 3070 of the Civil Code:

a. Disclosing all towing and storage fees and other charges in force.
b. Disclosing the following information: "Any person being charged for a Lien Processing Fee is entitled to copies of the supporting documentation showing the lien processing completed as of that date."

(2) An operator's place of business shall have a sign that clearly identifies it to the public as a towing service. The sign shall have letters that are clearly visible to the public from the street. The size of the lettering shall be comparable to the sign and lettering of neighboring businesses. The sign shall be visible at night.

(3) The contractor shall display in plain view and have available for handout upon request to any owner or operator of a towed or stored vehicle the Vehicle Owner Rights under VC Section 22651.07 Towing Fees and Access Notice.

H. Signage Handouts – Contractor shall have an adequate supply at all times of all required postings in English on 8.5" x 11" sheets of paper that is readily available to the public. These handouts will contain:

(1) The contractor's name, address and contact phone number on the top or a listing of all tow rotation companies on the backside with full contact information, and;
(2) All required postings of rates, fees, business hours and lien processes as stated in Scope of Work, Sections 4(F) and 4(G). This supply of handouts shall be placed out and available for the public to take with them at any time.

## 5. CONTRACTOR'S PERFORMANCE

A. The Contractor shall comply with all Federal, State and local laws applicable to towing, storage and disposition of vehicles.

B. Assignment to a Tow District - Upon acceptance into the Tow Rotation Program, the City will assign a Contractor to one (1) of the three (3) following operational districts. During the term of the Tow Services Contract, the City shall continually evaluate the number of contractors assigned to and the number of calls emanating from each district. The City may reassign any contractor(s) to another district if the City determines that the reassignment is in the best interest of the City.

- North - District #1: Area north of the north bank of the American River and west of the City limits which parallels Ethan Way.

- Central - District #2: Area south of the north bank of the American River or the City limits south of Feature Drive from the American River to Howe Avenue or from where Feature

Drive ends along Fair Oaks Boulevard; east of the west bank of the Sacramento River; north of the I-80 Freeway or north of the light rail tracks from US 50 to Jackson Road or north of the south curb of Jackson Road.

- Southeast - District #3: Area south of District #2. Area south of Capitol City Freeway extending from the Sacramento River, east to the highway interchange (Highway 50 and 99) and continuing south of Highway 50.

(1) The Contractor will be assigned, by the Chief of Police, to one (1) tow district only and shall provide tow service within that district on a 24-hour, 7-days-per-week basis.

(2) Two (2) tow rotation lists will be maintained. One (1) by the Police Department and one (1) by Code Enforcement. Inclusion in the Police tow rotation list mandates that the contractor shall participate in the tow rotation list maintained by City Code Enforcement simultaneously and meet all requirements set forth in Scope of Work, Section 5. Contractors are prohibited from maintaining multiple 'spots or turns' on the same tow rotation list.

C. Response Time - The Contractor shall respond to all requests for service from the City of Sacramento within thirty (30) minutes, from the time it receives the call from the Police or Code Enforcement Dispatcher. In the event the Contractor fails to furnish a tow unit within the specified time period, the City of Sacramento may cancel the tow request and request a tow unit from another Contractor. When the tow is canceled, the Contractor shall forfeit his/her turn in that rotation. If the contractor does not answer a call from the City of Sacramento for dispatch to a tow, the contractor shall forfeit his/her turn in that rotation.

D. Inability to Dispatch Tow - If the Contractor is unable to dispatch a tow unit immediately upon receiving a call for service, the Contractor shall immediately inform the City of Sacramento, and the Contractor shall forfeit that turn of the rotation.

E. Passing on Vehicles - The Contractor shall tow and store all vehicles which the City of Sacramento requests that the Contractor remove from any location, private or public, provided the Contractor has the necessary equipment and the vehicle can be safely transported.

F. Safekeeping of Vehicles and Personal Property - The Contractor shall be responsible for the security of vehicles and property at the place of storage. As a minimum, a fenced or enclosed area shall be provided. The Contractor is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles and shall take any and all precautions necessary with the safekeeping of all items associated with each tow. Personal effects in the vehicle at the time of the tow shall be immediately released to the registered owner or authorized agent during normal business hours when he/she presents proper identification. Contractor shall take any and all precautions necessary to maintain all towed vehicles in 'like' condition as they were received.

G. Subcontracting -The Contractor shall not authorize another Contractor or other person or company to tow a vehicle which has been assigned by the City to the original Contractor. Evidence impound vehicles are not included in this section. Exceptions must be approved by the Tow Administrator with the Sacramento Police Department.

H. Towing of Assigned Vehicle - The Contractor shall not tow a vehicle which has been assigned to another Contractor by the City of Sacramento, except as expressly requested by an Officer, a City Dispatcher or the Tow Hearing Officer. Responding to a call and towing or attempting to tow a vehicle to which the Contractor was not assigned shall result in up to a thirty (30) day

suspension from both tow rotation lists on first offense and termination on second offense within any twelve (12) continuous months.

I. Accident Assistance - The Contractor shall tow any vehicle or vehicles which have been assigned to another Contractor to the closest safe distance from the accident as directed by a Sacramento Police Department officer, and shall not charge either the owner of the vehicle or vehicles or City for this service. The originally assigned Contractor will then assume the responsibility of towing the vehicle upon arrival at the scene.

J. Vehicle Inspection Assistance - The Contractor shall provide assistance, including, but not limited to, moving or lifting towed vehicles, without additional charges. Theft recovery vehicles are to be stored in a secure facility and be easily accessible until cleared by the Auto Theft detail.

K. Inspection of Towed Vehicle VIN and License Plates - Contractor shall inspect every tow on-scene prior to hooking up or within twenty-four (24) hours of each tow dispatch call to verify that the license plates and VIN (Vehicle Identification Number) on every vehicle or trailer match the information documented by the Officer on the SPD-188 form. If any variation or discrepancy exists, the contractor will immediately notify the Officer on-scene or Police dispatch, who will determine if Code Enforcement or the Police Department initiated the tow. The responsible department will respond as soon as possible to inspect and correct the documentation issue. A new SVS (Stolen Vehicle System) entry may be needed in some instances. Failure to meet the above requirements shall result in up to a thirty (30) day suspension from both tow rotation lists and full financial responsibility for the tow and all storage fees for each violation.

L. Holds Placed on Towed Vehicles - Contractor shall release any vehicle where a proper Sacramento Police Department release has been obtained or where directed by the California Vehicle Code.

If a 'verbal' advisement from the towing Officer is given to 'hold' the car and no valid tow authority authorizes this 'verbal hold', the contractor shall immediately release such vehicle once a proper release is obtained from the Sacramento Police Department or as directed by the California Vehicle Code. Failure to meet the above requirements shall result in up to a thirty (30) day suspension from both tow rotation lists and full financial responsibility for the tow and all storage fees for each violation.

M. Vehicle Release - Prior to releasing a vehicle to the registered owner or his/her agent, a release must be obtained from the Sacramento Police Department for vehicles towed and/or stored pursuant to the following California Vehicle Code sections:

- 10751 — Altered or Removed Vehicle Identification Number
- 14602.6 — Revoked/Suspended License
- 14602.8(a) — DUI Impound
- 14602.8(b) — DUI Impound
- 22523(a) — Abandoned on Highway
- 22523(b) — Abandoned on Private Property
- 22651(a) — Vehicle Left Standing on Bridge
- 22651(b) — Vehicle Left Standing on a Highway
- 22651(d) — Blocking Driveway
- 22651(e) — Blocking Fire Hydrant
- 22651(f) — Vehicle Left on a Highway
- 22651(h)(1) — Driver Arrested
- 22651(h)(2) — Notice of Suspension Issued

- 22651(i) Five or More Parking Citations
- 22651(j) No License Plates
- 22651(k) Parked in Excess of 72 Hours
- 22651(l) Vehicle in Violation of Local Ordinances re: Construction
- 22651(m) Vehicle in Violation of Local Ordinances Permitting Removal
- 22651(n) No Parking - Tow-Away Zones
- 22651(o) Registration Expired 6 Months
- 22651(p) Unlicensed Driver
- 22651(q) Vehicle Parked on Highway in Common Interest Development, where posted
- 22651(r) Illegally Parked - Blocking Movement
- 22651.5 Removal of Vehicles with Activated Audible Alarms
- 22653(a) Removal from Private Property
- 22653(b) Removal from Private Property – Left at scene of accident
- 22653(c) Driver Arrested - Private Property
- 22655 Hit-and-Run or Pursuit/Evading
- 22655.3 Removal of Vehicle Evading the Police
- 22655.5 Removal of Vehicle Involved in a Public Offense
- 22656 Removal of Vehicle from a Railroad Right-of-Way
- 22669(d) Parked - Major Components Missing
- 23109.2 Seizure of Vehicle Used in Speed Contest

N. Lien Sales - Shall be the sole responsibility of the Contractor, and all such sales shall be conducted in accordance with applicable state law.

## 6. CODE ENFORCEMENT

A. Abandoned Vehicles - Vehicles towed under CVC 22669 shall occur during the business hours of (Monday-Friday 0700-1700 hours), unless the vehicle in question poses a hazard.

B. Response Time - The Contractor shall respond to all requests for service from the City of Sacramento within thirty (30) minutes, from the time it receives the call from the Code Enforcement Dispatcher.

C. Skipping - Intentional or frequent skipping of Code Enforcement Tow requests may be grounds for suspension from both tow rotation lists up to (30) days or termination of this contract as follows:

- Two (2) cancellations / skips in any seven (7) contiguous day period: Warning letter and phone call.
- Three (3) cancellations / skips in any seven (7) contiguous day period: Second warning letter and phone call.
- Four (4) cancellations / skips in any seven (7) contiguous day period: Letter of discipline and suspension from both tow rotation lists up to thirty (30) days.

In the instance of a Code Enforcement rotation tow, that contractor shall maintain their position on top until a tow is received by the contractor.

## 7. CONTRACTOR'S RECORDS

A. Contractor's Records - The Contractor shall maintain records of tow services furnished for all public agencies as well as all private persons or entities while participating in the Tow Services Contract, including those described below, as a minimum. Such records shall be retained for a period of four (4) years, and shall be open to inspection during business hours immediately upon request by representatives of the Sacramento Police Department or City of Sacramento. Failure to make records, including insurance policies and complete financial and payroll data, available immediately upon request shall be grounds for immediate suspension or termination from the Tow Services Contract. At minimum, records should contain:

(1) Tow Services - The contractor shall record the following information for every tow:

- Original or copy of the SPD-188 tow form.
- Name, address, and phone number of person, if available, whose vehicle was towed.
- VIN and license number, make, year, and model of each vehicle towed.
- Location from which the vehicle was towed.
- Name or employee number of driver assigned to said tow.
- Location to which vehicle was towed (if different from Contractor's primary storage facility.)
- Reason for tow, whether impound, accident, stolen recovery, abandoned, etc., if available.
- Location to which vehicle was towed (if secondary tow is made) and any and all subsequent location transfers or moves including the dates and time of those moves.
- Name of party to whom the vehicle was released.
- Method and date of payment.
- All fees and charges for said tow, showing specifically towing, storage, lien fees, etc.
- Any items of personal property released from any vehicle, including the date, time, and name of person receiving the items.
- Disposition of towed vehicles that are unclaimed.
- All proceeds from the sale of towed vehicles that are unclaimed.
- All documentation of purported claims relating to damage, theft, vandalism, other acts of negligence or damage from acts of god as they relate to each involved vehicle, trailer or conveyance.
- Date and Time (by means of a computer or time stamp)
    - Date and time the request for tow is received.
    - Date and time a tow unit departs the tow facility (or residence of driver if after business hours).
    - Date and time the tow unit arrives at the Contractor's storage facility.
    - Date and time any contents are released.
    - Date and time of release of the vehicle.

(2) Lien Sale Data - The contractor shall record the following information for every tow:

- Date the lien processing begins.
- Date the notice of lien sale is mailed.
- Date and time of lien sale.
- Location of lien sale.
- Identification of purchaser.
- Monies received as a result of the lien sale.
- Amount of excess monies forwarded to the state.

(3) Personnel Records - All employees, drivers and sub-contractors, both current and former shall have a secured personnel file at the primary business office that shall contain at a minimum records related to their employment, training, benefits status, discipline, FMLA and leave requests, vacation requests and sick time records. Any additional personnel documentation needed to comply with this contract shall also be contained within these records.

B. DOJ Report Request - The Contractor shall comply with the Vehicle Code in the immediate reporting of the removal and storage of any Sacramento City vehicles. Upon request, the Contractor shall immediately furnish the Sacramento Police Department with a copy of all reports which the Contractor is required to furnish the Department of Justice pursuant to the Vehicle Code.

C. Vehicle Status Report - Upon request, the Contractor shall immediately furnish the Sacramento Police Department with all reports showing the status of all vehicles. The report shall provide descriptions and identification of the vehicles, location of the vehicles, date of impounds, accrued charges, and date of release from impound.

D. Property Receipts - The Contractor shall furnish a receipt to the vehicle owner for any property removed from any vehicle towed or stored. A copy of the receipt shall be placed in the vehicle involved, and the original receipt maintained with the Contractor's records.

## 8. TRUCK DRIVERS AND EQUIPMENT SPECIFICATIONS

A. Truck/Driver Availability - The Contractor must have in operation at all times a sufficient number of qualified drivers and at least two (2) Class A tow vehicles with a minimum of 10,000 GVWR meeting the tow truck specifications and having the equipment specified for a Class A tow truck, as set forth in Attachment E. This requirement can be met with either two (2) recovery/wheel lift trucks, or one (1) each recovery/wheel lift truck and one (1) flat bed carrier truck.

B. Tow Vehicle Permit - The Contractor shall use only tow vehicles that have been inspected by the City of Sacramento and have received a valid and current Tow Vehicle Permit. Additionally, each tow vehicle shall be certified by a state-licensed inspection facility, or have received a certificate issued by the California Highway Patrol when responding to tow requests pursuant to this Tow Services Contract.

C. CHP Requirements - Each tow vehicle used for services under the Tow Services Contract shall comply with the provisions of the California Vehicle Code. Each tow truck will be equipped as provided in Attachment E, CHP Tow Truck inspection Guide, at all times and must have the Contractor's company name clearly painted or in decal form on both sides of the tow truck.

D. Tow Truck Driver - The contractor shall ensure that tow truck drivers responding to calls initiated by the SPD are qualified and competent employees of his/her company. The Contractor shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through Sacramento Police Rotation. Tow truck drivers shall be at least 18 years of age, hold a current and valid Sacramento City Tow Driver Permit and possess the following minimum class driver's license. CHP Certification Required.

- Class A Tow Truck – A valid Class C license, or a valid Class A license with valid medical certificate on file.
- Class B Tow Truck – A valid Class C license for non-regulated vehicles, or a valid Class A license with valid medical certificate, on file, for regulated vehicles pursuant to Section 34500 CVC.
- Class C Tow Truck – A valid Class A license with valid medical certificate.
- Class D Tow Truck – A valid Class A license with valid medical certificate.
- The Class A (1) license must be endorsed to allow operation of special vehicle configurations and/or special cargos.

E. Current List of Drivers - The Contractor shall maintain and provide a current list of his/her drivers to the Sacramento Police Department upon implementation of this contract. The Contractor shall notify the Sacramento Police Department upon any change in driver status, including the addition of any new driver(s), or the deletion of any driver(s). An updated list shall be provided to the SPD within (7) seven calendar days of any change in driver status. Contractors, shall at a minimum, maintain the following information for each driver:

- Full Name
- Date of Birth
- California driver's license number with expiration date
- Copy of valid medical certificate
- Tow driver permit number with expiration date
- Job title/description
- Current home address
- Current home phone number
- Type(s) of truck(s) driver has been trained and instructed to operate.

F. Employer Pull Notice Program - All tow truck drivers and Contractors shall be enrolled in the Pull Notice Program. Upon the addition of new drivers, a Contractor will be granted a maximum of 30 days to enroll drivers in the Pull Notice Program. Pull Notices shall be kept on file, signed, and dated by the Contractor. Sacramento Police Department may require a Contractor to provide copies of Pull Notice Reports. All drivers will maintain a valid City of Sacramento tow car driver permit.

G. Driver/Equipment Changes - The Contractor shall in writing immediately notify the Sacramento Police Department Tow Administration Office of any changes in or additions to, including deletions of tow trucks, drivers and other equipment or employees.

## 9. PROFESSIONAL DEMEANOR AND CONDUCT

A. Professional Demeanor and Conduct - At all times while participating in the Tow Services Contract, Contractor and Contractor's tow truck drivers and all other employees and any sub-contractors shall conduct themselves in a courteous, honest and professional manner in all their dealings with the public and the City, its employees, and agents. The City may at any time conduct random customer service inquiries with citizens who have been towed by any contractor acting under the terms and contracts of this proposal. Negative responses shall result in further follow-up by the Tow Hearing Officer and possible administrative action against the offending contractor.

As a tow operator for the City of Sacramento you will abide by the *California Tow Truck Association Code of Ethics.*

- To show my faith in the worthiness of my profession by upholding high standards, honor, and a high degree of integrity.
- To provide the general public with the best possible service and to promote a sense of personal obligation to each individual.
- To comply with all federal, state, county, city laws and regulations.
- To aid my fellow industry man in time of need and not to do anything which might conceivably injure the reputation of my competitors.
- To seek success and to demand fair remuneration that is justly due, but accept no profit at the price of my own self respect lost because of unfair advantage taken or questionable acts on my part.
- To provide the public with adequate equipment, which is kept as clean and neat as possible, and to train my drivers to be polite and courteous during public contact.
- To employ truth and accuracy in advertising and soliciting and to honor any commitments made in the course of business.

B. Misconduct - While involved in the City of Sacramento Tow Rotations, the operator and his/her employees shall refrain from any acts of misconduct, including but not limited to any of the following:

(1) Rude or discourteous behavior directed towards City of Sacramento personnel or citizens for whom service is provided. "Rude or discourteous behavior" shall mean any act that would insult, aggravate, disturb or frustrate a person of reasonable sensibilities, which act(s) shall include, but is not limited to, using profanity or inappropriate language, manifesting an uncooperative and/or angry demeanor, performing acts of vandalism, failing to respond to questions in a courteous and professional manner, intentionally misrepresenting rates or tow procedures or attempting to manipulate rates or tow procedures at the detriment of citizens or the City of Sacramento.

(2) Discourteous or unprofessional treatment of the public or any City employee in connection with services rendered pursuant to the Tow Services Contract shall result in up to a thirty (30) day suspension from both tow lists on the first and second offense and termination of this contract on the third offense within a continuous twelve (12) month period. For the purpose of this Tow Contract a member of the public shall include any private or business

party outside of the City of Sacramento, whether individual or as part of a group. See Scope of Work, Section 9.

(3) Any act of sexual harassment or sexual impropriety.

(4) Unsafe driving practices.

(5) Any objective symptoms of alcohol and / or drug use / abuse while performing any related tow service for the City of Sacramento. See Attachment F – Drug Free Workplace.

(6) Sub-standard service, customer service, selective service, or refusal to provide service which the tow company is capable of performing.

## 10. ADMINISTRATIVE MATTERS

A. Contract Administration Fee - The Contractor agrees to pay to the City a non-refundable fee as specified in Scope of Work, Section 2(B) for Class A tows for Police rotation referral, including service calls. This administration fee must be absorbed by the Contractor and is not to be passed on to the customer. For purposes of this section, a tow rotation referral refers to each call the Police Department makes to the Contractor requesting it to tow a vehicle pursuant to the Tow Services Contract. If the Police Department cancels a tow, it shall not be counted as a tow rotation referral. The fee must be paid monthly, based upon the number of tow rotation referrals in the previous month. Payments are due fifteen (15) days after billing. Payment of the fee is a condition precedent to being placed on the rotational tow list and receiving tow rotation referrals. The fee is intended to cover the City's costs and expenses of administration of the Tow Services Contract and is non-refundable and non-transferable.

Late payments will cause that Contractor to be suspended from both tow rotation lists without further notice for a minimum of four (4) days. The Contractor shall be required to pay the outstanding fees plus a one hundred dollar ($100.00) administration penalty fee in order to be reinstated into the rotation. A phone call from the Tow Administration Office will serve as notification of non-payment and initiate the suspension. This fee is only applicable to Police Department rotation tow calls, regardless of type. Payments delivered by hand on the due date must be dropped off at the physical address of the Tow Administration Unit at 300 Richards Boulevard, Sacramento, CA 95811, in order to avoid suspension. Payments dropped off by hand must be accompanied by a phone call notification to either (916) 808-0585 or (916) 808-0595.

B. Transfer of Business - The Contractor will notify the Sacramento Police Department immediately upon transfer of ownership of all or part of the company. The Tow Services Contract is not transferable to the new owner. The new owner must apply to and be approved by the Sacramento Police Department for a participation in the Tow Services Contract, and shall be required to pay the fee provided in Scope of Work, Section 10(A).

C. Option Semi-Annual Contract Review - The purpose of this section is to provide a process for an optional semi-annual review of the terms and conditions of the Contract by the Chief of Police and an organization representing a majority of the Contractors in the City of Sacramento in the event that legitimate and substantial changes occur in conditions or law affecting the majority of the Contractors in the City of Sacramento. Examples of such conditions may include, but are not limited to, substantial increases/decreases in business expenses, changes in the law affecting the Department or the operators, or recommended changes in the terms and conditions of the rotational Tow Contract as a result of service delivery experience in the City of Sacramento.

A request for a semi-annual review of the terms and conditions of the Contract shall be communicated to the Tow Program Administration Office of the Sacramento Police Department in writing by a majority of the Contractors under this Contract, and not merely at the request of a single Contractor. The Chief of Police may also request a semi-annual review if he/she feels it is in the best interests of the citizens of the motoring public, the Sacramento tow industry, and/or the Department.

D. Period of Performance - The period of performance associated with the contract shall be: The date of award through December 31st, 2012, as well as two (2) one-year option periods.

E. Option Period - It is the City of Sacramento's sole discretion to exercise an option period. Option periods will be exercised upon successful completion of the contract in accordance with its Non-Professional Services Contract, Scope of Work, and its contract clauses and provisions.

F. Expiration - Unless sooner terminated, the Contract shall expire December 31, 2012. Notwithstanding the term of the Tow Services Contract and the discipline procedures contained herein, the Contract may be terminated immediately upon written notice given by either the Contractor or the Sacramento Police Department. The Contract may be terminated at any time in the sole discretion of the Police Department, with or without cause.

G. Termination - This Tow Services Contract may be terminated at any time by either party with or without cause. Although the City may elect to impose discipline for violations of the Contract which are less severe than termination or may grant an appeal to discipline imposed, the Contract may be terminated without cause. The Contractor agrees that the disciplinary procedures and options contained herein do not affect the City's ability to terminate the Contract at the discretion of the Police Department without cause. Nothing in the Contract shall be construed to create any property rights, interests or licenses held by the Contractor.

## 11. CONTRACT VIOLATIONS AND/OR COMPLAINTS

A. Deviations from the terms of this contract and/or complaints received from police officers, other City employees, or private citizens against the Contractor may be investigated by the Sacramento Police Department or its designee. The Chief of Police may take any action, including written reprimands, suspension from both tow rotation lists, or termination of the Tow Services Contract when the Contractor or his or her employees have violated any of the terms of the Contract or any law or local ordinance. Upon completion of any investigation pursuant to this section, the Police Department shall inform the Contractor, in writing, of any disciplinary action to be taken. Unless otherwise noted within the Scope of Work, violations within a continuous twelve (12) month period may result in any of the following actions:

- First violation – Warning notice
- Second Violation – Three (3) day suspension
- Third Violation – Seven (7) day suspension
- Fourth violation – Fifteen (15) day suspension
- Fifth Violation – Thirty (30) day suspension
- Sixth Violation – Termination of the contract

B. In addition to the violations/disciplinary actions detailed within individual sections of the Scope of Work, following are further violations:

(1) Within any calendar month, more than two failures to either respond to a request for tow service within the time set forth in Section 5(C), Contractor's Performance, or refusing/failing to tow any qualifying vehicle assigned, or passing on/unavailability to respond will constitute a violation. This section is applicable to the Police Department tow rotation list. Frequent skipping of Code Enforcement tows is addressed in Section 6(C).

(2) Inadequate office or storage areas, employees, or equipment not meeting the requirements set forth in this Tow Services Contract shall result in up to a thirty (30) day suspension from both tow rotation lists on first and second offense and termination of this contract on third offense within any twelve (12) continuous months.

(3) Subcontracting for any tow service, or violating the financial interest section in Section 3.14 of the RFP, shall result in immediate termination of this Tow Services Contract.

(4) Contractor's failure to satisfy a court order/judgment mandating reimbursement to a vehicle or property owner for the damage or loss which occurred while the vehicle was in the Contractor's custody will result in a suspension from both tow rotation lists. The suspension will remain in effect until the Contractor has presented proof of the reimbursement to the Police Department.

(5) Any other violation of the Contract will result in a suspension or termination depending upon the severity of the incident.

C. In the event that it is determined that a Contractor is to be served with a notice of termination from the Tow Services Contract, the Tow Administrator will provide written notification detailing the offense(s). The Contractor may request an appeal hearing within seven (7) calendar days by submitting a request in writing to the Police Department. Nothing set forth in this paragraph shall permit the Contractor to appeal any termination of the Tow Services Contract affected by the Police Department. Failure of the Contractor to request an appeal of the decision of the Police Department within the seven (7) days required pursuant to this section shall constitute a waiver of the Contractor's right to an administrative appeal of the decision. If a hearing is requested, it shall be held as soon as practicable while still allowing the Contractor a meaningful time period to prepare a defense. The hearing shall be conducted by the Tow Review Committee. The hearing shall be informal and the rules of evidence shall not apply. The Contractor shall be entitled to present all relevant facts to the Tow Review Committee in support of his/her position. The Contractor shall be notified in writing of the decision by the Tow Review Committee within ten (10) calendar days of the date of the hearing. The decision of the Tow Review Committee is final and binding, and shall be subject to no further administrative appeal.

In the event the City terminates a Contractor from the Tow Services Contract and the Contractor seeks an appeal hearing, the disciplinary action will be delayed pending the administrative appeal process. In the event the Police Department elects to modify the discipline imposed on the Contractor, the Contractor agrees he or she shall not be entitled to recover any costs, compensation, damages, losses, and/or expenses of any type or description from or file a claim against the City, its officers, employees, and appointees, including but not limited to members of the Tow Review Committee, arising out of or related to, in any manner, a complaint filed against, or discipline imposed upon the Contractor.

## 12. INSURANCE REQUIREMENTS

A. The failure to maintain adequate insurance coverage for any reason at any time shall result in immediate suspension from the Tow Services Contract and both tow rotation lists until proof of insurance is received by the City.

B. Insurance Requirements - During the duration of the Tow Services Contract the Contractor shall maintain all required insurance. The City may suspend, terminate or disqualify the Contractor from the Tow Services Contract for failure to comply with any of the listed insurance provisions. Specific kinds include:

- Commercial General Liability
  - with Garagekeepers' Liability,
  - or a Garage Liability Policy that provides substantially equivalent coverage is acceptable.
- Business Auto Liability.
- Workers' Compensation & Employers' Liability

C. Minimum Scope of Insurance - Coverage shall be at least as broad as:

- Insurance Service Office form number CG 0001 (Commercial General Liability);
- Insurance Service Office form number CA 0001 (Ed. 1/87) (Automobile Liability, Code 1 "any auto");
- Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance;
- Garagekeepers' Liability is required for the storage of vehicles and may be provided as an endorsement or a separate policy.

D. Minimum Limits of Insurance - The Contractor shall maintain limits not less than:

**(This requirement supersedes that indicated in the Non-Professional Services Contract; Attachment G)**

- Commercial General Liability: $1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage;
- Automobile Liability: $1,000,000.00 combined single limit per accident for bodily injury and property damage;
- Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the Labor Code of the State of California, and Employers' Liability limits of $1,000,000.00 per accident;
- Garagekeepers' Liability: $100,000 per occurrence / $1,000,000 aggregate limits required for the storage of vehicles.

E. Other Insurance Provisions - The policies are to contain, or be endorsed to contain, the following provisions:

- Commercial General Liability, Automobile Liability, and Garagekeepers' Liability shall contain the following endorsement: "The City of Sacramento, its officials, employees and

volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation as to the scope of protection afforded to the City, its officials, employees or volunteers."

- The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
- Coverage shall state that the 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.
- Workers' Compensation and Employers' Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, and volunteers for losses arising from work performed by the Contractor for the City. This requirement may, however, be waived in individual cases at the discretion of the City.
- All Coverages. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to the City. In addition, the Contractor agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to the City and the City approves the reduction in coverage or limits. The Contractor further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to the City and the City approves such increase.

## EXHIBIT B

## NONPROFESSIONAL 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 $_____0_____.

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 Exhibit A (Scope of Services) 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 Police Department
Tow Program Administration Office
Attention: Tow Administrator
5770 Freeport Blvd., Suite #100
Sacramento, CA 95822-3516
tow-administrator@pd.cityofsacramento.org
Telephone: (916) 808-0585
Fax: (916) 808-0707

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

**EXHIBIT C**

**NONPROFESSIONAL SERVICES AGREEMENT**

**FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall [*check one*]

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

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

## EXHIBIT D
## NONPROFESSIONAL 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 therefore 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 is 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, photostatting, 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 render 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 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)

B. Additional Insured Coverage

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

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

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

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

C. Other Insurance Provisions

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

(1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

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

E. Verification of Coverage

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

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

F. Subcontractors

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

**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

## LIVING WAGE REQUIREMENTS
(Nonprofessional Service Agreement)

### The Living Wage Ordinance

The City of Sacramento's Living Wage Ordinance (the "LWO") is codified as Chapter 3.58 of the Sacramento City Code. The LWO requires certain firms that enter into agreements or contracts (all subsequent references to a "contract" or "contracts" will refer to both contracts and agreements) to provide certain services to or for the CITY, to pay a specified minimum level of compensation to their employees for time spent performing any work on the CITY contract. The LWO also applies to certain subcontractors.

The LWO applies to contracts entered into, amended, or renewed or extended at the CITY's discretion, on or after March 1, 2004 (the "LWO Effective Date").

### Contracts and Contractors Covered by the LWO

Determining whether the LWO applies to a specific CITY contract, contractor or subcontractor, depends on whether the contract, contractor and/or subcontractor meet the criteria specified in the LWO for contract type, contract amount, contractor size (# of employees), subcontract amount and subcontractor size (# of employees). These criteria are summarized below.

Contract Type

The LWO applies only to contracts for Nonprofessional Services. Under the LWO, this includes contracts for any services of a nonprofessional character, including but not limited to tree trimming services, repair services for motor vehicles and office equipment, vehicle towing, and security services.

The LWO does not apply to: (1) Incidental services, such as delivery, installation or maintenance, that are provided under contracts for the purchase or lease of equipment, supplies, or other personal property; (2) contracts that are subject to CITY, state, or federal prevailing-wage requirements; (3) contracts for professional services (including but not limited to services rendered by engineers, architects, auditors, banks, consultants, actuaries and attorneys); and (4) contracts with nonprofit corporations that are organized under section 501 of the Internal Revenue Code and have fewer than 100 employees, whether full or part time.

Contract Amount

The LWO applies to contracts entered into or amended after the LWO Effective Date that provide compensation from the CITY of $100,000 or more. In addition, the LWO applies to a contract entered into or amended after the LWO Effective Date that, by itself, does not reach this amount, if the aggregate value of that contract and of any other Nonprofessional Services contracts covered by the LWO that the CITY has awarded to the same person or firm within the previous 12 months, is $100,000 or more. IT IS THE CONTRACTOR=S RESPONSIBILITY TO DETERMINE WHETHER THIS AGGREGATE VALUE IS $100,000 OR MORE, AND TO NOTIFY THE CITY IN WRITING WHENEVER THIS IS THE CASE.

Contractor Size

The LWO only applies to a contractor that has at least 25 employees, working either full or part time. The number of employees that a contractor has is determined by adding the contractor=s employees and the employees of any other person or entity deemed to be a "Related Person" under the LWO.[a]

Subcontract Amount

The LWO applies to a subcontractor providing services under a covered contract if the amount of the subcontract is at least 25 % of the contract amount, without regard to the number of employees the subcontractor has.

Subcontractor Size

The LWO also applies to a subcontractor providing services under a covered contract if the subcontractor has at least 25 employees, working either full or part time, whether or not the amount of the subcontract is at least 25 % of the contract amount.

**Payment of Living Wage to Covered Employees**

If a contractor or subcontractor meets the criteria specified in the LWO for contract type, contract amount, contractor size, subcontract amount and/or subcontractor size, the contractor or subcontractor is deemed to be a "Covered Employer" under the LWO. The LWO requires a Covered Employer to provide specified minimum compensation to its employees who perform work directly related to the

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[a] The LWO provides that a person or entity is a Related Person when any of the following circumstances exists:

(1) The person or entity and the contractor are both corporations, and (i) share a majority of members of their governing boards, or (ii) have two or more officers in common, or (iii) are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation=s voting power), or (iv) are in a parent-subsidiary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation=s voting power); or

(2) The person or entity otherwise controls and directs, or is controlled and directed by, the contractor, as determined by the City Manager.

CITY contract (these employees are called "Covered Employees" under the LWO), for all hours the Covered Employees perform under the CITY contract.[b]

The minimum compensation required is as follows:

(1) If health benefits are provided to Covered Employees and the Covered Employer's contribution for the benefits is at least $1.50 for each hour, then the rates are as follows:

(a) During 2007, the greater of $10.00 an hour or $9.00 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.

(b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

(2) If health benefits are not provided to Covered Employees or if health benefits are provided but the Covered Employer's contribution for the benefits is less than $1.50 for each hour, then the rates are as follows:

(a) During 2007, the greater of $11.50 an hour or $10.50 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.

(b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

**Notification to Covered Employees**

The LWO requires a Covered Employer to give each existing employee and (at the time of hire) each new employee a copy of the following written notification:

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[b] A Covered Employee includes full-time, part-time, contingent, contract and temporary employees, but does not include: (1) individuals who participate in job-training-and-education programs that have, as their express purpose, the provision of basic job skills and education to participants, with the goal of earning a high-school-equivalency diploma and permanent employment; (2) student interns; (3) individuals participating in specialized-training programs; and (4) an employee whose term and conditions of employment are governed by a bona fide collective-bargaining agreement containing an express waiver of the LWO.

**This company may enter into a contract to perform services for the City of Sacramento. If you work on such a contract, then you are entitled to be paid a living wage for each hour so worked. For more information, see Chapter 3.58 of the Sacramento City Code, which can be viewed at www.cityofsacramento.org.**

The LWO requires the above notification to be provided in each language spoken by 10% or more of the Covered Employer=s workforce.

The LWO also requires a Covered Employer to inform all employees of their possible right to the federal Earned Income Credit (EIC), and to make available to those employees any forms required to secure advance EIC payments from the Covered Employer.

**Subcontractor Compliance**

A contractor is responsible for requiring all of its subcontractors who are covered by these requirements to comply with the provisions of the LWO, by including these requirements in all subcontracts covered by the LWO.

**Other Provisions of the LWO**

Use of Funds Paid Under CITY Contracts

Under the LWO, Covered Employers may not directly use CITY funds to persuade Covered Employees to support or oppose unionization, and Covered Employers may not directly use CITY funds to schedule or hold meetings related to union representation during the Covered Employees' working hours. These restrictions do not apply to expenditures made during good-faith collective bargaining or to expenditures required under bona fide collective-bargaining agreements.

No Reduction in Non-Wage Benefits

Under the LWO, Covered Employers may not fund any wage increases required by the LWO, nor shall Covered Employers otherwise respond to the enactment of the LWO, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of their employees.

No Retaliation

The LWO prohibits a Covered Employer from taking any adverse action against a Covered Employee because the Covered Employee does any of the following: (1) exercises or asserts his or her rights under the LWO; (2) informs or assists other Covered Employees concerning their rights and the Covered Employer's obligations under the LWO; (3) complains about the Covered Employer's failure to comply with the LWO; or (4) seeks to enforce the LWO.

No Reduction in Collective-Bargaining Wage Rates

The LWO does not require or authorize any Covered Employer to reduce wages set by a collective-bargaining agreement or required under any prevailing-wage law.

**Violations and Monitoring**

The LWO provides that any violation of the LWO by a CITY contractor constitutes a material breach of the contract, and authorizes the CITY to terminate the contract and pursue all available legal and equitable remedies. In order to monitor compliance, the LWO authorizes the CITY to require Covered Employers to verify their compliance with the LWO by submitting certified payroll records to the CITY, and to take such other steps as may be necessary for the CITY to determine whether the requirements of the LWO have been satisfied.

The LWO also includes provisions authorizing an employee or interested person to file a judicial action against a contractor or subcontractor for violation of the LWO.

**Declaration of Compliance**

To assure compliance with the LWO, any person or entity entering into a contract to provide Nonprofessional Services to or for the CITY, on or after March 1, 2004, is required to provide the CITY with a signed Declaration of Compliance in the form required by the CITY, prior to the CITY's execution of the contract. The Declaration of Compliance shall be signed by a duly authorized representative of the person or entity entering into the contract, and, when accepted by the CITY, shall constitute part of the contract.

**Additional Information**

- For a complete description of the LWO's provisions, refer to the LWO codified at Sacramento City Code Chapter 3.58. The Sacramento City Code is available on the internet at www.cityofsacramento.org.
- For more information on the LWO requirements and the CITY's LWO program, contact Procurement Services at 916-808-6240.

# EXHIBIT F

## 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 . . .**

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

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

O Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages

- Reasonable attorney's fees and costs

# Attachment B

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

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

The included employee benefits are:

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

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

**You May . . .**

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

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

O Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

**Discrimination and Retaliation Prohibited.**

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

**You May Also . . .**

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