



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 5/29/2012

Report Type: Consent

Title: Agreement: PeopleSoft System Upgrade for the Electronic Citywide Accounting and Personnel System (eCAPS)

Report ID: 2012-00463

Location: citywide

Recommendation: Pass a Motion authorizing the City Manager, or City Manager's designee, to execute a professional services agreement with Graviton Consulting Services, Inc. to implement a PeopleSoft system upgrade for the Electronic Citywide Accounting and Personnel System (eCAPS), for an amount not to exceed \$1,147,184.

Contact: Gary S. Cook, Chief Information Officer, (916) 808-8600; Steve Sneed, IT Manager, (916) 808-7987, Information Technology Department

Presenter: None

Department: Technology

Division: Technology Administration

Dept ID: 07001011

Attachments:

- 1- Description/Analysis
- 2- Background
- 3- Agreement with Graviton Consulting Services

City Attorney Review

Approved as to Form
Janeth D. San Pedro
5/21/2012 8:35:55 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
5/11/2012 11:51:46 AM

Approvals/Acknowledgements

Department Director or Designee: Gary Cook - 5/17/2012 10:28:18 AM



Description/Analysis

Issue: Effective December 2012, PeopleSoft will discontinue supporting the City's current version of PeopleSoft. The Electronic Citywide Accounting and Personnel System (eCAPS) technical upgrade will provide the City with the most recent supported version of the PeopleSoft software to support the Finance, Payroll, Human Resource (HR), Benefits and Budget Systems. eCAPS supports all City departments, Charter Offices and Mayor/Council and processes over 117,000 direct deposit and paychecks annually for a total of \$182 million. In addition, eCAPS processed 93,564 Accounts Payable transactions totaling \$350 million last year and 42,636 Accounts Receivable transactions totaling \$107 million. These functions are core administrative processes that are critical to the ongoing operations of the City.

Upgrades are required on a regular basis for eCAPS to ensure continued technical support from PeopleSoft and to comply with government reporting requirements including, but not limited to, processing federal and state payroll changes (W2's and 1099's). These updates and support needs are also essential to comply with ongoing labor requirements from the City's various labor unions.

A Request for Proposal (RFP) process was utilized to secure PeopleSoft upgrade implementation services. An evaluation team reviewed the seven proposals submitted and determined that Graviton Consulting Services, Inc. best met the City's implementation needs and provided the best value to the City. Graviton's \$1,147,184 bid was the lowest bid submitted by over \$300,000.

Policy Considerations: The requested action is in conformance with City Code Chapter 3.64 and in accordance with the goals, objectives, initiatives and operating principles of the City's Information Technology Strategic Plan.

Environmental Considerations: The report concerns administrative activities that will not have a significant effect on the environment and is exempt from CEQA review [CEQA Guidelines Sections 15061(b)(3); 15378(b)(2)].

Sustainability Considerations: Not applicable.

Committee/Commission Action: Not applicable.

Rationale for Recommendation: The Information Technology (IT) Department is responsible for maintaining the eCAPS system. A technical upgrade to the most recent PeopleSoft version requires capability beyond current IT staff resources.

Financial Considerations: The total cost for the Graviton Consulting Services, Inc. agreement is \$1,147,184. There is sufficient funding in the ERP Systems Project (A07000600) to implement this system upgrade.

Emerging Small Business Development (ESBD): Not applicable.

Background

In 2005, the City initiated the process to replace its legacy finance, human resources and payroll system with PeopleSoft, officially known as the City's electronic Citywide Accounting and Personnel (eCAPS) system. The eCAPS system currently uses 11 modules in the Finance/Supply Chain (FCSM) application and 6 modules in the Human Capital Management (HCM) application, with approximately 30 incoming and outgoing interfaces in the FCSM and HCM applications.

In an effort for the City to maintain the level of support required for this critical administrative business system, an upgrade to the most recent PeopleSoft version needs to be performed. The City conducted an assessment between June and September of 2011 to determine the resources, timeline, cost, and potential efficiencies for implementing an upgrade to the most recent version of PeopleSoft. In February 2012, City Staff issued a Request for Proposals (RFP) for PeopleSoft upgrade implementation services, which include system design review and development, testing, knowledge transfer and post-support. A total of seven responses were received; all met the City's minimum requirements. The top three vendors were selected to provide a presentation to the evaluation team. The three top-rated proposals were from the following vendors: Graviton Consulting Services, Inc., Zanett Commercial Solutions, Inc., and Smart ERP Solution.

The evaluation team was composed of staff from Finance, Human Resources and Information Technology Departments, respectively. The evaluation team reviewed and evaluated the final three vendors based on their response to the proposal, presentation of City needs, and upgrade expertise. It was determined that Graviton Consulting Services, Inc. best met the City's upgrade implementation needs and provided the best value to the City. Graviton's bid included additional services of implementing an approval framework, workflow and delivering a change management process that will greatly benefit the City. In addition, Graviton's bid was the lowest bid by over \$300,000 and \$2.1 million lower than the highest bid as indicated below.

Graviton	\$1.1 million
Smart ERP	\$1.4 million
Empower	\$1.9 million
Zanett	\$2.0 million
Oracle	\$2.5 million
Metaformers	\$2.9 million
Hexaware	\$3.2 million

Graviton also brings consultants familiar with the City of Sacramento's business processes and customizations that will greatly enhance the efficiency and timeliness of the necessary upgrade.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the Council Report, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

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

PROJECT NAME: PeopleSoft System Upgrade Project
DEPARTMENT: Information Technology Department
DIVISION: Enterprise Business Systems

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of May 23, 2012, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*Vineet Srivastava, President
Graviton Consulting Services Inc.
1024 Iron Point Road
Folsom, California 95630
Phone: (888) 472-8481
Email: vineet@gravitonconsulting.com*

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

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

4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

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 - Non-Discrimination in Employee Benefits

CONTRACTOR:

Graviton Consulting Services Inc.
NAME OF FIRM

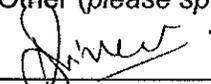
90-0547175
Federal I.D. No.

State I.D. No.

1009263
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

VINEET SRIVASTAVA, PRESIDENT
Print Name and Title

Additional Signature (if required)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Graviton Consulting Services Inc.

Address: 1024 Iron Point Road, Folsom, California 95630

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

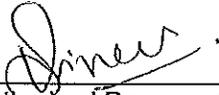
1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

- e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

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



Signature of Authorized Representative

05/23/2012

Date

VINEET SRIVASTAVA

Print Name

PRESIDENT

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Steve Sneed, IT Manager
1000 I Street, Suite 120
Sacramento, California 95814
Phone (916) 808-7987
Fax (916) 808-5087
ssneed@cityofsacramento.org*

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

The CONTRACTOR Representative for this Agreement is:

*Vineet Srivastava, President
Graviton Consulting Services Inc.
1024 Iron Point Road
Folsom, California 95630
Phone: (888) 472-8481
Email: vineet@gravitonconsulting.com*

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

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is X is not ___ [check one] required for this Agreement. If required, such coverage must be continued for at least ___ year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. Generally. Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity.

Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: X yes no [check one]

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the assuming office statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. **Time of Performance.** The services shall be provided in accordance with the schedule specified in Attachment 1 to Exhibit A. The application development services shall be provided from agreement approval through June 30, 2013.

SCOPE OF SERVICES

I. PROJECT OVERVIEW

The CITY currently uses Oracle PeopleSoft version 8.9 for its enterprise financial and human resources/payroll administration, known as the electronic Citywide Accounting and Personnel System (eCAPS). The CITY has purchased and installed the following modules for each application. All the listed modules are required for the upgrade.

Finance Supply Chain Management (FCSM) application

- Billing
- Cash Management
- Expenses
- General Ledger
- Grants
- Payables
- Program Management
- Project Costing
- Purchasing
- Receivables
- eProcurement
- Asset Management
- Contracts
- Deal Management
- Inventory
- Strategic Sourcing
- Supplier Contract Management
- eSupplier Connection
- Maintenance Management

Human Capital Management (HCM) application

- Absence Management
- Benefits Administration
- Human Resources
- Payroll for North America
- Time and labor
- eBenefits
- Candidate Gateway
- Talent Acquisition Manager
- eCompensation
- eCompensation Manager
- eDevelopment
- ePay
- ePerformance
- eProfile
- Enterprise Learning Management

Enterprise Performance Management (EPM) application

- Planning and Budget
- Scorecard
- Supplier Rating System

Enterprise Portal application

User Productivity Kit (UPK)

There are currently 31 incoming and outgoing interfaces in the FSCM and HCM applications. There are approximately 30 customizations made or in development, three assessed as complex. The CITY has also developed 20 bolt-ons, three assessed as complex. Customizations are any modifications made to the delivered software from Oracle. Bolt-ons are stand-alone and do not affect the delivered system. The CITY has also developed more than 100 Crystal Reports and 33 nVision reports.

II. PROJECT INITIATION AND PROJECT MANAGEMENT

Within ten days of execution of this Agreement, a project kickoff meeting will be scheduled between CONTRACTOR Project Manager and CITY Project Manager to establish a project schedule. The project schedule will contain the following components:

- Primary Tasks and major activities
- Estimated Start and End Dates
- Deliverable Milestones
- Task relationships and dependencies
- Resources assigned to tasks

CONTRACTOR will outline a communication plan that will be used to manage internal and external communications. This includes but is not limited to:

- Weekly Status Report – Provide a weekly report to the City Project Manager on a weekly basis. The reports will identify current activity status, delayed tasks and reasons for delay and identification of risks or showstoppers to the project.
- Weekly Status Meeting – Conduct a weekly status meeting with an agenda developed mutually by Contractor's Project Manager and the City's Project Manager.

III. IMPLEMENTATION SERVICES

CONTRACTOR will perform the technical upgrade of eCAPS to the latest supported Peoplesoft version to meet the City's functional requirements and existing business needs, recommend business process improvements and implement approved processes available within the latest PeopleSoft version.

- Upgrade PeopleTools Software to version 8.52

- Upgrade FSCM and Enterprise Portal applications to the latest PeopleSoft version 9.1 for all purchased modules with an estimated completion/go-live date of December 18, 2012
- Upgrade HCM application to the latest PeopleSoft version 9.1 for all purchased modules with an estimated completion/go-live date of January 14, 2012
- Upgrade EPM application to the latest PeopleSoft version 9.1 for all purchased modules with an estimated completion/go-live date of January 14, 2012.

CONTRACTOR will use the following phased approach in performing the upgrade for each module of the PeopleSoft FSCM, HCM, EPM, and Enterprise Portal applications.

A. Planning/Definition Phase

The Planning/Definition Phase involves a detailed approach to project planning which includes developing and maintaining the project work plan, organizing project activities, staffing the team appropriately, directing day-to-day activities, coordinating across the multiple stakeholders, controlling the project processes, measuring task completion, reporting status to internal and external stakeholders, and evaluating overall project effectiveness. The following key activities will be performed to complete this phase:

1. Workshops and Fit/Gap Analysis Sessions

CONTRACTOR will conduct group workshops with CITY designated staff to demonstrate the new functionalities of PeopleSoft version 9.1 and to determine if business process optimization can be achieved with the new version 9.1 features. These workshops will be held to:

- Identify existing system procedures and new features that can help eliminate a customization.
- Identify new feature(s) that can eliminate any issue(s).
- Decide on new features to be implemented based on CITY needs.
- Identify existing features that may eliminate an issue by modifying configuration.
- Identify issues that need to be submitted to PeopleSoft for resolution
- Decide on which issues resolutions to be implemented

Following the group workshops, fit-gap analysis sessions will kick off. These sessions will be used to document the challenges and mitigation steps as well as to understand the deltas between the current system and future PeopleSoft product and processes. CONTRACTOR will determine key pain points and identify future improvement opportunities for the City.

CONTRACTOR's technical lead for the assigned module and a change management resource will participate in these workshops and sessions.

2. Develop functional and technical design specifications

Based on the results of the workshops and fit-gap session, CONTRACTOR will develop and write functional and technical design specifications. The design specifications will include not only the design of new configurations or customizations but also the key aspects of change management

resulting from the deltas that will need to be addressed in order for the upgrade to be successfully implemented. The design specifications will also include content and decisions that will serve as key inputs for creating or updating the PeopleSoft User Productivity Kit (UPK) later on.

3. Power User Training

In order to prepare for the execution phase and to bring in CITY end users early in the process, training will be held on the new functionality of PeopleTools 8.52 and PeopleSoft 9.1 Suite deltas. This will include training on Security, Approval Framework, and XML Publisher. Additional training activities are described in the Training phase section below.

4. Cataloging/Customization Review

The CITY has performed a number of customizations for the application and interfaces. CONTRACTOR will identify and customizations and determine if the new functionality of PeopleSoft version 9.1 addresses the business needs or if the customizations will need to be integrated into PeopleSoft version 9.1.

5. Sizing Validation

CONTRACTOR will review and validate the sizing of the hardware and database for future scalability of the PeopleSoft application.

6. Environment Installation/Validation

CONTRACTOR will install PeopleSoft version 9.1 and apply all maintenance packs into the Demo and Sandbox environment creating a source environment. CONTRACTOR will validate the upgrade environment and the architecture.

7. Planning/Definition Phase Deliverables

- a. Detailed Project Plan - a Microsoft Project Plan that specifies tasks, duration, milestones and resource allocation
- b. Scope of Work – This document will define the project scope
- c. Upgrade Strategy Document - This document will define the approach on to upgrade the identified PeopleSoft Applications
- d. Infrastructure Analysis – A review of the current PeopleSoft hardware platform and how it is configured
- e. Fit-Gap Analysis – Process to understand and define the delta's in product and processes between the current PeopleSoft product and the future PeopleSoft product
- f. Functional and Technical Design Documents – Standard Documentation to identify the business requirements and the technical specifications

- g. Change Management Document Draft – This document will identify the Change Management Process, tools and methods of communication that will be used to manage system changes
- h. Knowledge Transfer Plan – Identify the process of communicating the system changes and processes to City Staff

B. Execution/Initial Pass Phase

The execution/initial pass phase involves making a copy of the current production database, applying the PeopleSoft patches, fixes and bundles, and creating and validating the first Upgraded Production Database. The following key activities will be performed to complete this phase:

1. Upgrade Copy of Production

A copy of the PeopleSoft 8.9 Production Database will be created as the original "TARGET" instance. Using the PeopleSoft Change Assistance utility, the "TARGET" instance will be upgraded from the Demo Database instance previously validated during the planning/defining phase. The output will be the City's first upgrade of the 8.9 to 9.1 application.

2. Compare/Review Process and Scripts

CONTRACTOR will review and validate the upgraded TARGET database with CITY staff to assess the success of the initial database upgrade. CONTRACTOR will create automation scripts to be used for each subsequent iteration of the upgrade.

3. Retrofitting the Customizations

CONTRACTOR will perform retrofitting and set-up of queries, interfaces and bolt-on customizations.

4. Execution/Initial Phase Deliverables

- a. Upgrade Test Scripts –Modify current test scripts to accommodate for changes in process
- b. Custom Objects Projects – Identify and ensure retrofitting of custom applications and projects within the system
- c. Change Management Document – Final version

C. Testing Phase

Contractor will provide a standardized test approach as outlined below. Progression of each testing phase shall be dependent on the review and approval of the City prior to progression to the next test phase or migration to production. Prior to any testing, a Test Plan will be created and finalized defining the processes, expectations, acceptance criteria, and the test scripts created. In order to begin testing activities in a timely fashion and enable a smooth transition into the testing phase, the definition and script creation process will kick off in parallel with the Execution/Initial Pass phase.

1. Unit Testing

CONTRACTOR will perform unit testing on each module/program of the applications solution. Successful completion and sign off by the CITY on unit testing is required before proceeding to the next testing process.

2. Test Definition/Script Creation and Test Execution

Upon successful completion of unit testing, CONTRACTOR will establish an overall test approach and define the test plan and appropriate test cases for each test phase. CONTRACTOR will utilize the PeopleTools 8.52 Test Framework whenever possible during the test script creation process to assist in reduction in the manual testing efforts required in the next phases.

CONTRACTOR will use the copy of the Production Database from the Execution/Initial Pass Phase as the new "SOURCE" database and will create a new copy of the Upgraded Production Database as the "TARGET" database. The defined test cases/scripts for each test phase will be executed and refined if needed and custom projects will be migrated to the "TARGET" database to complete the Test Move 1.

During the test execution process, CONTRACTOR will execute the defined test cases/scripts for each test phase and document the results. CONTRACTOR will review and remediate and re-test any variances in Expected versus Actual results.

3. System/Integration Testing (Test Move 1)

This test process will provide end to end and integrated testing of the PeopleSoft FSCM, HCM, EPM, and Enterprise Portal applications. CONTRACTOR will execute the scripts developed in the prior test process and document the results, including resolution times to any errors identified during this test process.

4. User Acceptance Testing (Test Move 2)

CONTRACTOR will coordinate User Acceptance Testing with the CITY. This test process provides the end users an opportunity to use the system in a separately controlled environment to determine if the system meets the users' expectations as defined in the Functional and Technical Design Documents and to provide feedback on the quality of the system. A change control process will be used to log issues and identify and fix any issues.

5. Parallel/Load Testing (Test Move 3)

Upon successful completion of User Acceptance Testing, CONTRACTOR will coordinate Parallel/Load Testing. This test process provides a result comparison of the current and new PeopleSoft environments as well as conducting a Load Test of the system using SilkPerformer Test Scripts.

6. Testing Phase Deliverables

- a. Test Scripts using PeopleTools 8.52 Test Framework – Creation and automation of application test scripts

- b. Data Conversion Validation Reports – Reports to verify all conversion from the current system to the new system is successful
- c. System and Integration Test Results – Conduct, identify and document results from System Integration Testing which includes end to end testing and interface testing. Remediate and retest as needed
- d. User Acceptance Test Results – Conduct, identify and document results from User Acceptance Testing in a separate environment. Remediate and retest as needed
- e. Parallel Test and Load Test Results - Conduct, identify and document results of Load testing using Silk Performer software. This will identify any performance issues within the system.
- f. Final Cutover Plan – Transition plan and checklist for Go Live weekend. This will identify tasks and resources to ensure a successful Go Live
- g. Final Upgrade Scripts
- h. Custom and retrofitted objects, retrofitted SQR's, Cobol, XML Reports, Batch Process List
- i. Modified PeopleSoft Security Document, Approval Process Document

D. Change Management and Training Phase

1. Training Needs Assessment

CONTRACTOR will work with the CITY to conduct a training needs assessment to determine users and subject areas for training/knowledge transfers. The training assessment will link the analysis and actual development of the training program.

CONTRACTOR will apply the ADKAR methodology approach. ADKAR is a goal-oriented change management model that allows change management teams to focus their activities on specific business results. ADKAR is a model of the change process that include five steps, or building blocks – Awareness, Desire, Knowledge, Ability, Reinforcement – that need to occur in the proper sequence for each individual and each department in order for the change to be successful.

2. Knowledge Transfer

Contractor will develop A knowledge transfer plan that will outline an approach for knowledge transfer to be provided to City staff

3. User Training

Based on the training needs assessment, CONTRACTOR will develop, write training materials, and train end users on the upgraded PeopleSoft system. This will include, but not be limited to, training

on Security, Approval Framework, and converting existing Crystal reports to XML Publisher as the new reporting tool.

4. Update User Productivity Kit (UPK)

CONTRACTOR will work with the City designated staff to identify, create and update content for the UPK.

5. Change Management and Training Phase Deliverables

- a. Training Material/Documents – Updated training documents that identify users to train and approach to training
- b. Updated UPK Content – Updated UPK documents by financial application to assist in initial and subsequent training
- c. Technical Knowledge Transfer Documents (e.g. XML Publisher, Approval Frameworks) - Identify and convert specific crystal reports to XML and train identified City staff.

E. Cut-Over Phase

CONTRACTOR will work with CITY staff to develop a Cut-Over Plan that will guide the project team and end users in preparing for and supporting successful go-live deployment of the application system. CONTRACTOR will work with the City to mitigate risk during the Cut-Over Phase. This will be a clearly defined deployment plan.

Following User Acceptance and Parallel Testing, the current Production Database will be frozen and will become the "TARGET" database. The most recent successful output of the "Test Move to Production Pass" will now be the "SOURCE". The data migration scripts to move data from PS 8.9 to PS 9.1 Production instance "TARGET" will be executed and then the additional configuration steps applied creating the newly upgraded Production Environment.

Successful Cut-Over requires close coordination and detailed planning to deploy the solution to its end users. During this time, verification of the accuracy of the data and settings is a major part of the Cut-Over process. CONTRACTOR will develop a comprehensive checklist to help confirm that the production environment is ready and the Cut-Over activities have been completed successfully.

IV. POST-PRODUCTION SUPPORT

Upon CITY's request, CONTRACTOR will provide post production support on as-needed basis to resolve functional and technical problems within the scope of the 128 hours per phase not to exceed 512 hours. These hours can be used at any time until hours are exhausted or termination of the contract. CONTRACTOR will be paid for post-production support services based on the hourly rates stated in Attachment 1 to Exhibit. B.

V. WARRANTIES

A. CONTRACTOR represents and warrants that for a period of ninety calendar days following Final Acceptance by the CITY, the Services and all other deliverables furnished hereunder by CONTRACTOR will: (i) meet the functionality requirements set forth in the Statement of Work and further defined in the Functional and Technical Design Documents, (ii) be free from all material defects; and (iii) perform in accordance with the specifications and configurations set forth in the Functional and Technical Design Documents. CONTRACTOR further represents and warrants that all CONTRACTOR-provided software configurations, modifications, customizations, data conversions and interfaces will function properly and in accordance with the Functional and Technical Design Documents, separately and as a fully integrated system, and when operated together will not cause any material delays, defects, or problems with the PeopleSoft system.

B. CONTRACTOR shall not be responsible for (i) software changes, software additions, software modifications, applied patches or fixes or data irregularities caused by the CITY to any portion of the PeopleSoft system unless such actions are taken under the direction of CONTRACTOR; and (ii) non-performance issues that result from third-party hardware or firmware malfunction or defect.

C. CITY will provide CONTRACTOR with written notification of the error and a detailed explanation of why the error does not meet the functionality requirements set forth in the Functional and Technical Design Documents. CONTRACTOR shall provide CITY with a problem identification and resolution plan for the warranty violation within five (5) calendar days of receiving notification. CONTRACTOR shall work with the CITY to promptly resolve the warranty issue within the agreed resolution plan timeframe. CONTRACTOR shall use commercially reasonable efforts to satisfactorily resolve the warranty issue within thirty (30) calendar days, or as otherwise agreed to by the parties after being notified of a warranty violation.

If said warranty violation is preventing the CITY from using the eCAPS system for Productive Use (a "Critical Violation"), CONTRACTOR shall respond to the notification within twenty-four (24) hours with a proposed resolution plan. CONTRACTOR will dedicate sufficient resources to satisfactorily resolve the Critical Violation as soon as practicable according to the resolution plan. CONTRACTOR will use commercially reasonable efforts to satisfactorily resolve the resolution within (7) calendar days after being notified of a Critical Violation.

For purposes of this Section, "Resolution of an error" shall include, but not be limited to, the following:

1. Provide a workaround for the error that allows the Software System to support the CITY's business operations.
2. Provide for manual processing.
3. Provide a system fix or update.
4. Provide a correction to the Software System setup.

D. If after thirty (30) calendar days from notification CONTRACTOR is unable to correct the warranty violation, CITY shall be entitled to receive a refund of the amounts paid to CONTRACTOR under this Agreement. The remedies specified in this section are not exclusive of any others CITY may have.

VI. CONTRACTOR PERSONNEL

A. CONTRACTOR is performing services under a fixed price arrangement and is responsible for deliverables that are subject to CITY approval throughout the project. CONTRACTOR will

communicate to CITY personnel changes and will adhere to CITY processes for onsite CONTRACTOR personnel and when CONTRACTOR personnel require system access.

B. CONTRACTOR Project Manager. CONTRACTOR represents that CONTRACTOR's initial Project Manager, and any replacement CONTRACTOR Project Manager, shall be an experienced manager who shall be knowledgeable as to the CITY's activities related to the eCAPS system and shall direct the efforts in fulfilling CONTRACTOR obligations under this Agreement. The CITY shall have the right to interview CONTRACTOR's initial and any replacement Project Manager. CONTRACTOR shall not reassign its Project Manager during the term of this Agreement without the CITY's prior written consent. Any reassignment or replacement of CONTRACTOR Project Manager shall not result in the alteration or reduction of Services to the CITY.

C. Key Personnel. CONTRACTOR's initial Key Personnel are identified in Attachment 2 to Exhibit B. The CITY shall have the right to interview the initial Key Personnel and any replacement Key Personnel, and CONTRACTOR shall not designate any Key Personnel without the CITY's prior written consent. During the term of this Agreement, CONTRACTOR shall not reassign any individual designated as Key Personnel without the CITY's prior written consent, which shall not be unreasonably withheld. In the event any one of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by CONTRACTOR and therefore becomes unable to perform the functions or responsibilities assigned to him or her, CONTRACTOR shall (i) within forty eight (48) hours, temporarily replace such person with another person properly qualified to perform the functions of such replaced person, and (ii) within one (1) month provide a permanent replacement of similar skills, knowledge and training who is subject to the prior approval of CITY.

D. Qualified Personnel. CONTRACTOR agrees that each CONTRACTOR personnel performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement and as specified by the CITY from time to time. For each CONTRACTOR personnel, to the extent permitted by, and in accordance with, applicable law, CONTRACTOR shall conduct routine reference checks (e.g., work experience), verification of education and technical training, and background checks (e.g., felony and misdemeanor conviction check), and any other checks required by law. CONTRACTOR agrees that each CONTRACTOR personnel will be properly trained to perform the Services and is oriented with respect to the policies and procedures of the CITY. The CITY shall not be required to pay any fees relating to any CONTRACTOR personnel prior to such time as the training and orientation with respect to such CONTRACTOR personnel is completed and such CONTRACTOR personnel commences performing the Services hereunder.

E. Minimum Proficiency Levels. The CONTRACTOR Personnel, including the Key Personnel, shall have experience, training, and expertise at least equal to prevalent industry standards applicable to such personnel for their responsibilities in the business in which CONTRACTOR is engaged and shall have sufficient knowledge of the relevant aspects of the Services and the CITY's practices and areas of expertise to enable them to properly perform the duties and responsibilities assigned to them in connection with this Agreement. In the event of a breach by CONTRACTOR of its obligations with respect to the minimum proficiency levels of CONTRACTOR personnel, CONTRACTOR shall promptly take one of the following actions: (i) remove and replace any CONTRACTOR personnel after receipt of notice from the CITY that such CONTRACTOR personnel does not meet the required minimum proficiency levels; or (ii) take appropriate action with respect to any such CONTRACTOR personnel, including, but not limited to, training to bring such CONTRACTOR personnel's proficiency levels in line with such required minimums.

F. Removal and Replacement. In the event CITY desires the removal or replacement of any of the CONTRACTOR personnel, CITY shall notify CONTRACTOR in writing. The CITY's decision to request the removal or replacement shall not be arbitrary or capricious in nature and CITY and CONTRACTOR agree to work in good faith to minimize any negative impact on the Services caused by the removal. CONTRACTOR shall accomplish any such removal within fourteen (14) calendar days after receipt of notice from the CITY and shall promptly replace such personnel with another person, acceptable to the CITY, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement.

VII. DELIVERABLE ACCEPTANCE PROCESS

Drafts shall be provided, when applicable, of each deliverable prior to formal submittal. CITY shall review and provide written approval or comments, as appropriate. In general, comments, issues, or sign-off shall be provided within five (5) business days after receipt of draft. If necessary and so instructed to do so, each deliverable will be revised as appropriate and another draft of the final version submitted within three (3) business days. The CITY shall respond to resubmitted deliverables within three (3) business days.

In the event that CITY fails to respond to a deliverable as required above, notice shall be given to the CITY Project Manager or designee. In the event that no response is received from the CITY within three (3) business days of the notice, the deliverable shall be deemed to be approved.

A "sign-off" form for the CITY to indicate its approval, disapproval, or other comment shall accompany each deliverable submission. If the CITY and CONTRACTOR are unable to come to agreement on the acceptance of a deliverable, the Dispute Resolution Process set forth below will be initiated.

VIII. PAYMENT MILESTONE PROCESS

In accordance with the Milestone Payment Schedule (Attachment 2 to Exhibit A), drafts shall be provided, when applicable, of each Milestone deliverable prior to formal submittal. CITY shall review and provide written approval or comments, as appropriate. In general, comments, issues, or sign-off shall be provided within five (5) business days after receipt of draft. If necessary and so instructed to do so, each Milestone deliverable will be revised as appropriate and another draft of the final version submitted within three (3) business days. CITY shall respond to resubmitted Milestone deliverables within three (3) business days.

For Milestones that do not have an associated document deliverable, CONTRACTOR shall provide a written notice to the CITY indicating its position that the Milestone has been met. If CITY agrees that such Milestone has been met, then CITY will acknowledge the same in writing.

In the event that CITY fails to respond to a deliverable as required above, notice shall be given to the CITY Project Manager or designee. In the event that no response is received within three (3) business days thereof, the deliverable shall be deemed to be approved.

A "sign-off" form for the CITY to indicate its approval, disapproval, or other comment shall accompany each deliverable submission. If the CITY and CONTRACTOR are unable to come to agreement on individual Milestone acceptance the Dispute Resolution Process set forth below will be initiated.

IX. SYSTEM ACCEPTANCE

A. Conditional Acceptance

Conditional acceptance of the system is granted by CITY when, as evidenced by the successful completion of user acceptance testing in a non-production environment, the functional requirements set forth in the Statement of Work and Functional and Technical Design Documents are met. Conditional acceptance may be granted notwithstanding the existence of open issues if: (a) the CITY Project Manager determines that none of the open issues significantly impairs the CITY's ability to use the system; and (b) a mutually agreeable issues work plan is identified to resolve the open issues ("Conditional Acceptance Issues Work Plan"). Open issues include, but are not limited to, issues from the user acceptance tests and all open test issues on the test incident log regardless of the type of test.

A course of action to resolve the open issues may include, but is not limited to, completing the fixes during post-production support, utilizing a combination of resources from the CITY and CONTRACTOR to complete the fixes, and/or deferring the issue(s) or functionality to a later date.

B. Final Acceptance

Once Conditional Acceptance has occurred and the system has been moved to the production environment, CITY shall have one hundred and twenty business days from Conditional Acceptance to validate and provide Final Acceptance of the system or notify CONTRACTOR in writing of issues that remain open and how the issues do not meet the functional requirements set forth in the Statement of Work and in the Functional and Technical Design Documents.

Final Acceptance is granted by CITY when CONTRACTOR has resolved assigned issues described in the Conditional Acceptance Issue Work Plan. Final Acceptance may be granted notwithstanding the existence of open issues if: (a) the CITY Project Manager determines that none of the open issues significantly impairs the CITY's ability to use the system in a production environment; and (b) a mutually agreeable issues work plan is identified to resolve the remaining open issues ("Final Acceptance Issues Work Plan").

The course of action in the Final Acceptance Issues Work Plan may include but is not limited to, completing the fix during post production support, utilizing a combination of resources from the CITY and CONTRACTOR to complete the fix, and/or deferring the issue or functionality to a later date. If the CITY and CONTRACTOR are unable to reach an agreement on the issues work plan the Dispute Resolution Process will be utilized.

The CITY shall notify CONTRACTOR in writing of its Final Acceptance of the Software System. Except as provided in this section, in no event shall any other action or inaction by the CITY, including the CITY's use of the system in a production environment, constitute Final Acceptance of any portion of the system.

X. DISPUTE RESOLUTION PROCESS

Any dispute, disagreement, claim or controversy between the parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved by first having the Project Manager for CONTRACTOR and the Project Manager for the CITY meet for the purpose of endeavoring to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within five (5)

business days thereafter, the parties agree to elevate the dispute to the Managing Director level of CONTRACTOR and CITY's Information Technology Department Director. Failing such mutual agreement to resolve the dispute, the parties may pursue any other legal recourse available to it. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable or injunctive relief, may begin until the dispute resolution procedure, as described above is completed.

Milestone Payment Schedule

The estimated completion dates are subject to change and will be further defined in the project plan upon mutual agreement by the parties.

1. Phase 1 FSCM/Portal Payment Schedule

Estimated Date of Completion – October 22, 2012

Milestone	% Due	Milestone Amount
Detailed Project Plan/Organization Chart	10%	\$42,542
Fit Gap Analysis Document	30%	\$127,627
Customization/Interface Review 100% Complete	10%	\$42,542
Functional/Technical Design Docs/ Test Scripts	10%	\$42,542
Execution/Initial Pass 100% Complete	10%	\$42,542
Test Move 1-3 100% Complete	10%	\$42,542
Training/Knowledge Transfer 100% Complete	10%	\$42,542
Go Live	10%	\$42,542
Phase 1 FSCM/Portal Total		\$425,425

2. Phase 2 HCM Payment Schedule

Estimated Date of Completion – November 2, 2012

Milestone	% Due	Milestone Amount
Detailed Project Plan/Organization Chart	10%	\$32,541
Fit Gap Analysis Document	30%	\$97,625
Customization/Interface Review 100% Complete	10%	\$32,541
Functional/Technical Design Docs/ Test Scripts	10%	\$32,541
Execution/Initial Pass 100% Complete	10%	\$32,541
Test Move 1-3 100% Complete	10%	\$32,541
Training/Knowledge Transfer 100% Complete	10%	\$32,541
Go Live	10%	\$32,541
Phase 2 HCM Total		\$325,412

3. Phase 3 EPM Payment Schedule

Estimated Date of Completion – November 2, 2012

Milestone	% Due	Milestone Amount
Detailed Project Plan/Organization Chart	10%	\$13,041
Fit Gap Analysis Document	30%	\$39,130
Customization/Interface Review 100 % Complete	10%	\$13,041
Functional Design Docs/ Test Scripts 100% Complete	10%	\$13,041
Execution/Initial Pass 100% Complete	10%	\$13,041
Test Move 1-3 100% Complete	10%	\$13,041
Training/Knowledge Transfer 100% Complete	10%	\$13,041
Go Live	10%	\$13,041
Phase 3 EPM Total		\$130,417

4. Project Closure

Estimated Date of Completion – June 30, 2013

Milestone	% Due	Milestone Amount
Final Acceptance of the System	100%	\$97,916

5. Post-Production Support

Estimated Date of Completion – June 30, 2013

Upon CITY's request, CONTRACTOR will provide post-production support on as-needed basis to resolve functional and technical problems that may surface during the operation of the live system. CONTRACTOR will be paid for post-production support services based on the hourly rates described in Attachment 1 to Exhibit B.

Not to Exceed Amount

FSCM Application	\$16,256
HCM Application	\$16,256
EPM Application	\$16,256

Enterprise Portal Application

\$16,256

6. Travel Expenses

CITY will reimburse CONTRACTOR for actual costs of travel and related expenses in accordance with CITY's travel policy and expense reimbursement guidelines. Travel expenses will be billed separately. On those occasions when the expense amount exceeds CITY guidelines, CONTRACTOR will be solely responsible for absorbing those costs. The budgeted not to exceed amount for travel and related expenses under this Agreement is \$102,990.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$1,147,184.
2. **Billable Rates.** CONTRACTOR shall be paid on a milestone fixed fee basis for the performance of Services as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein. Any additional services will be paid based on the hourly rates stated in Attachment 1 Exhibit B. Hourly rates do not include travel and related expenses.
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. All reimbursable expenses, such as travel, will require original receipts to be submitted with the invoice.
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:

*Steve Sneed, IT Manager
1000 I Street, Suite 120
Sacramento, California 95814
Phone (916) 808-7987
Fax (916) 808-5087
ssneed@cityofsacramento.org*

- 5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
- 7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

Hourly Rates for Additional Services

Resource Name	Function	Hourly Rate*
Krishan Tuteja	Project Manager/Payroll Lead	127.00
Greg Head	Project Quality Assurance Manager	127.00
Ron Harris	Project Risk Director	127.00
Edith Thacher	Change Management Lead	127.00
Vineet Srivastava	Technical and Portal Lead	127.00
Mick Fisher	Technical Upgrade Specialist	127.00
Scott Savant	EPM Lead	127.00
Pratap Madugla	General Ledger, Billing, Accounts Receivable Lead	127.00
Gautam Chaudhary	eProcurement, Accounts Payable, Purchasing Lead	127.00
Jeevan Koppu	Human Resource, Benefit Administration, eBenefits Lead	127.00
Susan Vaccone	Time & Labor Lead	127.00
Chris Torrence	Absences Management and Time & Labor Functional	127.00
Sheila Lee	General Ledger Analyst	127.00

* Hourly rate does not include actual cost of travel and related expenses.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

Not furnish any facilities or equipment for this Agreement; or

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

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are

valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

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

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

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

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

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

10. Indemnity.

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

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

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

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

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

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

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

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

B. Additional Insured Coverage

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

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

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

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

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

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

F. Subcontractors

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

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

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

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

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

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract or Agreement

and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas

and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



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

On May 23, 2012, your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for professional services and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

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

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

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

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

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

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

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

Discrimination and Retaliation Prohibited.

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

You May Also . . .

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