



# City of Sacramento City Council

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

**Meeting Date:** 8/21/2012

**Report Type:** Consent

**Title: Agreement: Biological Monitoring Contract for Spawning Gravel Augmentation Project (G1400202)**

**Report ID:** 2012-00716

**Location:** Citywide

**Recommendation:** Pass a Motion authorizing the City Manager, or his designee, to execute a Professional Services Agreement with S. P. Cramer & Associates, Inc. in the amount of \$108,300 for work associated with the Lower American River Salmonid Spawning Gravel Augmentation Project being administered by the City-County Office of Metropolitan Water Planning.

**Contact:** Tom Gohring, Executive Director, (916) 808-1993, Community Support Department

**Presenter:** None

**Department:** Community Support

**Division:** CCOMWP

**Dept ID:** 80004101

## **Attachments:**

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- 1-Description/Analysis
- 2-Background
- 3-Agreement with S.P. Cramer and Associates

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### **City Attorney Review**

Approved as to Form  
Joe Robinson  
8/15/2012 11:27:58 AM

### **City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
8/9/2012 10:59:40 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Tom Gohring - 8/10/2012 2:58:22 PM

## Description/Analysis

**Issue:** The City-County Office of Metropolitan Water Planning (CCOMWP) has partnered with the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service (FWS), California Department of Fish and Game, and Sacramento County Regional Parks on the Lower American River Salmonid Spawning Gravel Augmentation Project (G14000200) (Project). The purpose of the Project is to increase the availability of spawning gravel and rearing habitat for fall-run Chinook salmon and steelhead trout in the lower American River. This report recommends approval of a professional services agreement to perform biological monitoring for the Project. Pursuant to the Interagency Agreement that created the CCOMWP, the City's procedures are followed for all CCOMWP contracting activities.

**Policy Considerations:** This Project will aid fish habitat restoration efforts for the Lower American River, consistent with goals of the Water Forum Agreement. In 2006 the U.S. Bureau of Reclamation (USBR) asked the CCOMWP to partner on a habitat restoration project in the lower American River. At that time, USBR asked the CCOMWP to contract with S.P. Cramer and Associates for the biological monitoring services portion of the Project. In accordance with the provisions of Administrative Policy 4102 (Professional Services), the CCOMWP Director has approved the continued retention of S.P. Cramer and Associates, because S.P. Cramer and Associates has provided biological monitoring services for the first five years of this Project and is uniquely qualified to provide these services for the sixth year of the Project.

**Economic Impacts:** None

### Environmental Considerations:

#### **California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA):**

The Project is subject to review pursuant to both CEQA and NEPA. The Bureau of Reclamation is responsible for NEPA review. The Bureau prepared a Finding of No Significant Impact (FONSI) for the Project. The NEPA review process does not require action by the City.

The Project is exempt from CEQA review pursuant to CEQA Guidelines Section 15333, Small Restoration Projects. The project does not exceed five acres in size, will be undertaken for the purpose of restoring habitat for fish, would have no significant impact on endangered, rare or threatened species or their habitat, and would not otherwise result in any significant effects on the environment.

**Sustainability Considerations:** Implementation of the Project is consistent with the City of Sacramento's Sustainability Master Plan Goals:

Sustainability Goal No. 7 - Parks, Open Space and Habitat Conservation is promoted by the second co-equal objective of the Water Forum Agreement "To preserve the fishery, wildlife, recreational, and aesthetic values of the lower American River."

**Commission/Committee Action:** None

**Rationale for Recommendation:** Approval of this contract with S.P. Cramer and Associates will provide biological monitoring of benthic macroinvertebrate fish communities and gravel movement needed for the Project.

**Financial Considerations:** This Project has no impact on the City of Sacramento's General Fund. On July 31, 2012 the Sacramento City Council authorized the execution of Modification No. 3 and Modification No. 4 to Agreement C2010-0694 with the United States Fish and Wildlife Service for an additional \$650,943 in federal funding for the Project, bringing the total funding for the Project to date to \$2,433,411. There are sufficient Habitat Management Element funds (Fund 7104) in the project (G14000202) for this contract for an amount not to exceed \$108,300.

**Emerging Small Business Development (ESBD):** This firm is not certified by the City of Sacramento as an Emerging or Small Business Enterprise.

## **Background Information:**

The United States Bureau of Reclamation (Reclamation) operates facilities that regulate flows in the lower American River, which contains populations of anadromous Chinook salmon and threatened steelhead trout. Flow regulation and stream channel manipulations have modified anadromous salmonid habitat in the American River. Specifically, gravel is regularly lost from spawning sites on the river because of the construction and operation of Central Valley Project dams, bank protection projects, and other actions that reduce the availability of spawning gravel and rearing habitat in the American River downstream of Nimbus Dam.

In 2006, Reclamation approached the CCOMWP, on behalf of the Sacramento Region Water Forum, to assist Reclamation and other project partners in carrying out the Project. Assistance from the CCOMWP includes project planning, permitting, inter-agency coordination, and contracting. Pursuant to the Interagency Agreement that created the CCOMWP, the City's procedures are followed for all CCOMWP contracting activities. This is the sixth year of this Project.

This Project is consistent with the goals of the Fisheries and Instream Habitat Plan, which is incorporated into the River Corridor Management Plan (RCMP). The RCMP is a coordinated approach to management of the lower American River that was developed and endorsed by 38 organizations and local governments in 2002, including the City of Sacramento. The RCMP serves as the implementation vehicle for the Habitat Management Element (HME) of the Water Forum Agreement, of which the City of Sacramento is a signatory. The HME implements one of the Agreement's co-equal objectives, which is to preserve the fishery, wildlife, recreational and aesthetic values of the lower American River.

In 2006 the U.S. Bureau of Reclamation (USBR) asked the CCOMWP to partner on a habitat restoration project in the lower American River. At that time, USBR asked the CCOMWP to contract with S.P. Cramer and Associates for the biological monitoring services portion of the Project. S.P. Cramer and Associates has provided biological monitoring services for the first five years of this Project and is uniquely qualified to provide these services for the sixth year of the Project.



PROJECT NAME: Lower American River Gravel Monitoring FY2013-14  
 DEPARTMENT: Citywide and Community Support  
 DIVISION: City-County Office of Metropolitan Water Planning (CCOMWP)

**CITY OF SACRAMENTO  
 PROFESSIONAL SERVICES AGREEMENT \***

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

S.P. Cramer & Associates, Inc.  
 600 NW Fariss Road, Gresham, OR 97030  
 Telephone: 503-491-9577, Fax: 503-465-1940

(“CONTRACTOR”), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager’s authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document

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

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

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

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**

A Municipal Corporation

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

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

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

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

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

ATTEST:

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

**Attachments**

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

**CONTRACTOR:**

S.P. Cramer & Associates, Inc.,  
dba Cramer Fish Sciences

NAME OF FIRM

93-1055956  
Federal I.D. No.

388-077-80  
State I.D. No.

158080  
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**

Steven P. Cramer, President  
Print Name and Title

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

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

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: S.P. Cramer & Associates, Inc.

Address: 600 NW Fariss Road, Gresham, OR 97030

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

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

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
  - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
  - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such

policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

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

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

**1. Representatives.**

The CITY Representative for this Agreement is:

**Tom Gohring, Executive Director**  
City-County Office of Metropolitan Water Planning / Water Forum  
2831 G Street, Suite 100, Sacramento CA 95816  
Telephone 916-808-1998, Fax 916-443-1255  
[tgohring@waterforum.org](mailto:tgohring@waterforum.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:

Joe Merz, Principal Scientist  
S.P. Cramer & Associates, Inc.  
600 NW Fariss Road, Gresham, OR 97030  
Telephone: 503-491-9577, Fax: 503-465-1940  
[jmerz@fishsciences.net](mailto:jmerz@fishsciences.net)

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

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

**3. Conflict of Interest Requirements.**

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

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

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

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

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

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

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

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

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

4. **Scope of Services.** [The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
5. **Time of Performance.** The services described herein shall be provided during the period beginning October 1, 2012 and ending on October 31, 2013.

## Attachment 1 to Exhibit A

# Lower American River Proposed Monitoring Work Scope October 2012 through September 2013 – Cramer Fish Sciences Utilization of Spawning Substrate by Size

### *Task 1. Use of various rock sizes at new site*

#### **Purpose and hypotheses:**

Previous LAR studies of substrate size effects on salmonid species and use by fish size suggest that rock size affects the ability of females to not only use restoration sites but also influences the energy expended to construct an individual redd (size and shape). However, the work to date has been limited to rock size available for study with basically two overlapping size classes spread out among sites. This year, we propose to use three distinct gravel sizes deposited in the 2012 enhancement site as a veneer of surfaces for selection by salmonids (see below for invertebrates). We hypothesize that rock size will have a significant effect on species use and that the size of individual females will significantly influence their ability to utilize specific rock sizes (we assume three rock sizes will be available: pea-gravel, medium gravel, and large gravel; sizes defined by BOR). This will build on previous work by removing confounding effects of site variation and lack of rock size variability.

#### **Methods**

*Spawning Gravel Quality-* We will use data on sex and fork length (mm FL) from Chinook and steelhead collected in the LAR (unpublished data provided by CDFG and BOR) to calculate average female size, and use 10% of the average female FL as the values to define the maximum movable material size for this population. This will determine our largest rock size class. We will also use FL frequency distributions to estimate an “optimum size.” Pea-gravel ( $\frac{1}{4}$  -  $\frac{1}{2}$  inch diameter) will be our smallest size.

*Material Placement-* We will work with BOR and the design team to place test plots at the restoration site. This will be a veneer of material from each of the size classes laid down in similar sized areas along each of three transects (9 plots total). These plots will be outlined in a GPS layer for future statistical analysis.

*Spawning Use-* We will use the information gathered during spawning surveys (see above) to compare use of various size classes of bed sediment by spawning Chinook salmon and steelhead, including the effects of substrate size on size of fish observed and morphology of constructed redds. Individual redds will be surveyed with datalogging GPS units (waypoint averaging will be used to attain sub-meter accuracy). GPS waypoints and associated data-dictionaries (containing the physical redd characteristic data) will be imported to ArcGIS to create spatial data layers and attribute tables to overlay with substrate layers for analysis.

*How will Task 1 inform adaptive management?* – This supports the general monitoring activities identified under Spawning Surveys and tracks long-term spawning use within the LAR to monitor restoration project success in relationship to overall population trends. This monitoring will help answer

the question identified under the Substrate Assessment section within the overall LAR gravel plan; i.e., Does substrate size have an effect on success of redd construction? Specifics: Are fish preferentially selecting their spawning location based on substrate size/intragravel conditions? Under validation monitoring of the LAR gravel plan, a key study question is whether salmonids preferentially select spawning locations based on substrate size/intragravel conditions. Appropriate screening of coarse-grained material is expensive and time-consuming. At present, the LAR program uses the general gravel guidelines set forth by AFRP for appropriate sizes (0.25 – 5 inch diameter). However, this does not take into account variability in female size within and between Chinook salmon and steelhead trout. The information gathered here will inform future gravel placement within the LAR, and help to better identify the effect of gravel size on spawning salmonids and improve screening guidelines for augmentation projects throughout the Central Valley.

## **Redd Surveys**

### ***Task 2. Support BOR surveys***

#### **Purpose and hypotheses:**

Continue seasonal surveys that provide BOR and USFWS longterm spawning use data on gravel augmentation sites within the lower American River. CFS will perform Chinook salmon redd surveys (October – January), whereas the BOR team (including one CFS lead) will provide steelhead trout surveys (January – Mar). It is important to note that late-fall Chinook salmon have been increasingly using the Lower American River. Therefore, monitoring redds during these months will require extra attention by survey crews to distinguish between late-fall Chinook salmon and steelhead trout; potential overlap in the spawning times of steelhead, lamprey, suckers and pike minnow also require attention. The information will also be used as part of study section 1 above and 3 below. Examples of hypotheses to test include:

- There is no significant difference in the proportion of Chinook salmon and steelhead using areas for spawning before and after gravel enhancement
- There is no significant difference in the proportion of spawning Chinook salmon and steelhead that use the enhanced areas versus the un-enhanced areas.

#### **Methods:**

Every two weeks, we will record, via GPS, the location of redds, including species identification (when possible); and on a subset of redds, estimated fish length, redd nose velocity, depth in pocket, width, length and length of tailspill. To collect information on redd-specific substrate size, we will photograph redds along with a placed measuring rod to avoid redd disturbance. Substrate size will be estimated from photo images.

*How will Task 2 inform adaptive management?* – This supports the general monitoring activities identified under Spawning Surveys. These surveys will also track long-term spawning use within the LAR to evaluate restoration project success in relationship to overall population trends.

## Juvenile Habitat Use

### *Task 3. Habitat complexity*

Previous LAR work demonstrated that gravel augmentation provides positive benefits to rearing juvenile Chinook salmon and steelhead, including expanded use of inundated floodplains. Two-dimensional modeling of depth, velocity, and substrate size with a simplified estimate of channel roughness has typically been used to demonstrate habitat quality for juvenile salmonids within the modeling process. This roughness element is used as a surrogate for other parameters including the key constraint of cover. Cover is needed by juvenile salmonids to provide protection from predators, avoid competition and reduce energy expenditures in relatively high velocities that transport prey items. Recent LAR restoration work has incorporated preliminary tests of cover elements for juvenile salmonids but results have been ambiguous due to the simplified nature of the structures and the difficulty of monitoring juvenile use of those structure. We will use a combination of cover elements and video surveillance to identify how cover complexity and juvenile salmon and steelhead growth influence fish density and territory size.

Specific hypotheses to be tested include:

- Cover complexity does not significantly effect rearing salmon and steelhead densities.
- Cover complexity does not significantly alter the territory size of juvenile salmonids
- Territory size adjacent to cover is not affected by juvenile salmonid size or species

### **Methods:**

We propose to set up three cover features (moveable structures of variable willow density) that can be placed within various locations of the river channel at the enhancement site. Within each structure, HD underwater video cameras will be placed to record juvenile salmonid use of the structures over the rearing period and over the diel period. Placement and video monitoring will occur for 1-2 hours per sampling period. Video will be reviewed after each sampling period to enumerate fish by species, estimate individual size, movement behavior, and other parameters that will help us test the hypotheses listed above. Cameras and structures will be removed when not in use to avoid damage.

We will test the effect of cover complexity on juvenile salmonid use of enhancement sites to help evaluate the cost/benefit of structure placement and/or revegetation at enhancement sites and provide standards for future restoration work.

*How will Task 3 inform adaptive management?* – Under effectiveness monitoring set forth under the LAR project, this task will help identify how to develop projects that reestablish channel and floodplain habitat complexity and improve ecosystem function. Furthermore, under the draft LAR Channel and Floodplain Restoration Planning Framework, a key design component is to increase in-channel habitat complexity to improve aquatic habitat for native aquatic species. This information will be informative in not only identifying optimum cover complexity but how juveniles utilize individual cover. This in turn will help in estimating the quantity and quality of cover needed to meet restoration goals.

## **Benthic Macroinvertebrates**

### ***Task 4. Colonization of various rock sizes***

Aquatic macroinvertebrates are an important component of the ecology of salmonid streams. Similar to the study proposed above, previous LAR work suggests that rock size affects the benthic and epibenthic macroinvertebrate community. However, the work to date has been limited to rock size available for study with basically two size classes deposited among sites. This year, we propose to have three distinct rock sizes deposited at the 2012 enhancement site as a veneer of surfaces for salmonids and macroinvertebrates to use (see below for invertebrates). We hypothesize that rock size will have a significant effect on species use, density, and biomass, and that community colonization will be significantly different depending on substrate size classes [we assume (1) pea-gravel, and (2) medium and (3) large gravel sizes; sizes defined by BOR]. This will build on previous work by removing confounding effects of site variation and lack of rock size variability.

Background- To date, most gravel augmentation performed in the California Central Valley prescribes to the notion that “one size fits all.” In this case, most enhancement projects utilize the size criteria set forth by the AFRP. However, coarse substrate is utilized by a variety of organisms within the lotic system, including benthic and epibenthic organisms that juvenile salmonids rely upon for forage. We assume that substrate size, even within the range of size classes put forth by AFRP, will have a significant effect on the structure (and function?) of invertebrate communities.

### **Methods:**

We will collect 4 benthic samples of macroinvertebrate communities within each of the 9 test plots (36 total; assume the April through May period). We will test for significant differences in invertebrate density, biomass and diversity by rock size treatment. Additionally, we will explore how, taxonomic structure, and the abundance of prey items preferred by juvenile salmonids is influenced by rock size to help set rock size standards for future restoration work.

*How will Task 4 inform adaptive management?* – Under effectiveness monitoring set forth under the LAR project, this task will help identify how to develop projects that reestablish channel and floodplain habitat connectivity and complexity, and improve ecosystem function. Furthermore, under the draft LAR Channel and Floodplain Restoration Planning Framework, a key design component is to increase in-channel habitat complexity to improve aquatic habitat for native aquatic species. Two of the component objectives are: (1) compare the relative proportion of different functional invertebrate groups (i.e., scrapers, collectors, shredders, and predators) between pre- and post-enhancement samples collected from the enhanced site; and (2) answer the question: Does the benthic macroinvertebrate community response include a functional shift toward more appropriate prey items for juvenile salmonids?

## **Early Lifestage Survival**

### ***Task 5. Embryo development and survival to hatch***

Previous LAR work demonstrates that gravel augmentation improves the hyporheic environment where Chinook salmon and steelhead embryos develop and hatch, and eventually emerge as swim-up fry. However, it has not been clearly demonstrated that these improvements convey significant increases in

survival or improved health of juvenile salmonids in the LAR. During Winter 2012/2013, we plan to study the relationship between spawning substrate composition (see Task 1), intergravel dissolved oxygen (DO), intergravel temperature, intergravel permeability, and intergravel turbidity on Chinook salmon and steelhead embryo survival, development, and general condition within the 2012 enhancement site.

Specific hypotheses to be tested include:

- Gravel augmentation has no significant effect on embryo survival or health at emergence
- Gravel size has no significant effect on embryo survival or health at emergence

### **Methods:**

Data will be collected from December 2012 through March 2013. We will construct artificial redds and bury approximately 7,000 green Chinook salmon eggs and 7,000 green steelhead eggs in incubation tubes within the nine test plots and an adjacent control plot for the 2012 augmentation site. A control group of 800 Chinook salmon eggs and 800 steelhead eggs will be placed in incubation tubes at the Nimbus Hatchery to monitor development and to assess the influence of these tubes on the developing eggs. Eggs will be provided by the Nimbus Fish Hatchery.

Based on observation of the hatchery control group and egg hatch model predictions, egg tubes will be removed from the gravel when eggs reach the “swim-up” stage. Tubes will be emptied into individual buckets and alevins counted, measured, and assessed for anomalies (such as disease or deformities). An index will also be used to assess alevin development. This index consists of agitating water in the bucket clockwise by hand for approximately 5 seconds, and noting if alevins can orient and maintain location relative to flow direction and velocity within the bucket. Scores will be recorded for each group as follows: 0, no orientation to current or maintenance of position in relationship to velocity; 1, 1-25% of alevins able to orient or maintain position with flow; 2, 26-50% of alevins able to orient or maintain position with flow; 3, 51-75% of alevins able to orient or maintain position with flow; and 4, 76-100% of alevins able to orient or maintain position with flow. Alevin mortalities and un-hatched eggs will be enumerated and recorded.

*How will Task 4 inform adaptive management?* – Under effectiveness monitoring set forth under the LAR project, three specific questions were asked associated with spawning success: (1) What effect does substrate size have on incubating salmonid eggs and alevin? (2) Does restoring in-channel coarse sediment processes improve egg-fry survival rates? (3) Does restoring in-channel coarse sediment processes have an effect on the condition of emerging fry? These paired tests are designed to answer these questions. The results will provide information addressing the direct value of gravel augmentation to restoration goals within the LAR and a better understanding of substrate parameters on future enhancement goals.

### **Project Management**

Under this task, staff will perform project management, including the schedule of field crews, safety meetings, and writing reports or the results of studies performed under this Scope of Work. Joe Merz will also attend 3 two-day meetings for the SDM modeling workshop put together by the United States Fish and Wildlife Service in Sacramento.

## 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 \$108,300 (One-Hundred Eight Thousand, Three-Hundred Dollars and no cents).
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

**Tom Gohring, Executive Director**

City-County Office of Metropolitan Water Planning / Water Forum

2831 G Street, Suite 100, Sacramento CA 95816

Telephone 916-808-1998, Fax 916-443-1255

[tgohring@waterforum.org](mailto:tgohring@waterforum.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.



Lower American River Effectiveness Monitoring for 2011 Gravel Placement (Sept 2012 through July 2013)														
Objectives and Tasks	Projected Hours							Labor Subtotal	Expenses					Totals
	\$179.00	\$124.00	\$106.00	\$94.00	\$70.00	\$58.00	\$46.00		Phone	Travel	Direct	Boat	Misc.	
	Principal Ecologist	Senior I	Biologist III	Biologist II	Biologist I	Bio-Tech II	Bio-Tech I							
<b>Lower American River Gravel Monitoring</b>														
<b>1. Use of various rock sizes at new site by spawning salmonids</b>														
a. Prep equipment		1			4	1		462				100	562	
b. Delineate areas of 3 rock size classes within enhancement site	2		2		8			1,130	225		75		1,430	
d. Record specific information on individual redds	6		1		8			1,740					1,740	
c. Data entry and QC			1	4	2	16		1,550					1,550	
d. Data analysis	2	2	8	8	4			2,486					2,486	
<b>Objective 1 Subtotal</b>	<b>10</b>	<b>3</b>	<b>12</b>	<b>12</b>	<b>26</b>	<b>17</b>	<b>0</b>	<b>7,368</b>	<b>0</b>	<b>225</b>	<b>0</b>	<b>75</b>	<b>100</b>	<b>7,768</b>
<b>2. Spawning Survey (Bimonthly Oct- Mar)</b>														
<b>(I) Chinook Spawning Survey (Bimonthly Oct- Jan)</b>														
a. Prep equipment		1			2	6		612					612	
b. Field survey (6 surveys)	6		8		40	40		7,042	300		125		7,467	
c. Data entry and management			2	4	8	8		1,612					1,612	
d. Data analysis	2	4	10		16			3,034					3,034	
<b>(II) Steelhead Spawning Survey w/ BOR (Bimonthly Jan - Apr)</b>														
a. Coordination and planning					4			280	25				305	
b. Field survey (8, 2-day surveys)					96			6,720		400			7,120	
c. Data management					4			280					280	
d. Data analysis	2	4	8	4	16			3,198					3,198	
<b>Objective 2 Subtotal</b>	<b>8</b>	<b>5</b>	<b>20</b>	<b>4</b>	<b>66</b>	<b>54</b>	<b>0</b>	<b>22,778</b>	<b>25</b>	<b>700</b>	<b>0</b>	<b>125</b>	<b>0</b>	<b>23,628</b>
<b>3. Juvenile Salmonid Habitat Use Assessment</b>														
<b>(I) Video stations</b>														
a. Prep equipment		1		6	6	6		1,456				600	2,056	
b. Field survey (3 surveys)	2			9	9	9		2,356	650				3,006	
c. Data entry, management and analysis		1	6	8	8	4		2,304					2,304	
<b>(II) Diel Surveys (1 winter; 1 spring)</b>														
a. Prep equipment	2			8	8			1,670				150	1,820	
b. Diel surveys	4		8	24	24	24	24	7,996	250				8,246	
c. Data entry				2	4	12	24	2,268					2,268	
d. Data analysis	4		8	8				2,316					2,316	
<b>Objective 3 Subtotal</b>	<b>12</b>		<b>22</b>	<b>65</b>	<b>59</b>	<b>55</b>	<b>48</b>	<b>20,366</b>	<b>0</b>	<b>900</b>	<b>0</b>	<b>0</b>	<b>750</b>	<b>22,016</b>
<b>4. BENTHIC MACROINVERTEBRATES</b>														
<b>(I) Colonization of various rock sizes</b>														
a. Prep equipment					4	4		512				250	762	
b. Field survey					10		30	2,080	225		125		2,430	
c. Lab sorting and ID (apx 36 samples)	4					80	80	9,036					9,036	
c. Data entry and management QA/QC			2		8	8	16	1,972					1,972	
d. Data analysis	4		6	10				2,292					2,292	
<b>Objective 4 Subtotal</b>	<b>8</b>		<b>8</b>	<b>10</b>	<b>22</b>	<b>92</b>	<b>126</b>	<b>15,892</b>	<b>0</b>	<b>225</b>	<b>0</b>	<b>125</b>	<b>250</b>	<b>16,492</b>
<b>5. EARLY LIFESTAGE SURVIVAL</b>														
<b>(I) Embryo development and survival to hatch</b>														
a. Prep equipment			2		4	8	8	1,324				250	1,574	
b. Get embryos from hatchery				3	3	3		666	500		125		1,291	
c. Build redds, plant tubes, pull tubes	4		18	20	20	40	40	10,064					10,064	
c. Data entry and management			2		4	8	16	1,692					1,692	
d. Data analysis	4	6	16	8	8			4,468					4,468	
<b>Objective 4 Subtotal</b>	<b>8</b>	<b>6</b>	<b>38</b>	<b>31</b>	<b>39</b>	<b>59</b>	<b>64</b>	<b>18,214</b>	<b>0</b>	<b>500</b>	<b>0</b>	<b>125</b>	<b>250</b>	<b>19,089</b>
<b>6. Project Management</b>														
Attend 3 x 2-day meetings for the American River SDM model	48	8						9,584	40	396				10,020
Completed Report (est. 30 Sept 2013)	4	16	32	24	12			9,188				20		9,208
<b>Project Management Subtotal</b>	<b>52</b>	<b>24</b>	<b>32</b>	<b>24</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>18,772</b>	<b>40</b>	<b>396</b>	<b>0</b>	<b>0</b>	<b>20</b>	<b>19,228</b>
<b>Project Totals</b>	<b>98</b>	<b>32</b>	<b>132</b>	<b>146</b>	<b>224</b>	<b>277</b>	<b>238</b>	<b>\$103,390</b>	<b>\$65</b>	<b>\$2,946</b>	<b>\$0</b>	<b>\$450</b>	<b>\$1,370</b>	<b>\$108,221</b>



**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 that 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 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 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 \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

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

#### **DEFINITIONS**

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

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

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

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

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

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

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

### **CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

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

### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

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

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

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

# Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

**You May . . .**

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

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

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

## Attachment B



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

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

The included employee benefits are:

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

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

#### **You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Procurement Services Division  
5730 24<sup>th</sup> Street, Bldg. 1  
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

#### **Discrimination and Retaliation Prohibited.**

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

#### **You May Also . . .**

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