



City of Sacramento City Council

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

Meeting Date: 8/21/2012

Report Type: Consent

Title: FY2012/13-FY2013/14 Source Water Protection Consultation Services

Report ID: 2012-00686

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or City Manager's designee to execute a professional services agreement with Starr Consulting to provide source water protection consultation services for the two year period of FY2012/2013 and FY2013/2014, for an amount not to exceed \$139,410.

Contact: Bill Busath, Interim Engineering Manager, (916) 808-1434; Sherill Huun, Supervising Engineer, (916) 808-1455, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Engineering Administration

Dept ID: 14001311

Attachments:

- 1- Description/Analysis
- 2 - Background
- 3 - Exhibit A - Agreement

City Attorney Review

Approved as to Form
Joe Robinson
8/10/2012 4:28:41 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
8/2/2012 4:03:34 PM

Approvals/Acknowledgements

Department Director or Designee: Jamine Moens - 8/8/2012 1:29:29 PM



Description/Analysis

Issue: Starr Consulting has been selected through a RFQ process to provide source water protection consultation services for FY2012/13 and FY2013/14 for the City's Sacramento and American River source water protection programs, including several regional projects in partnership with other water utilities. Starr Consulting will provide expert support on various subjects including Aerojet discharges in the lower American River watershed, programs to help ensure protection of the water supply from spills to the rivers and their tributary streams, and agricultural discharges to the Sacramento River.

Policy Considerations: Completion of the tasks in the agreement is essential to support the following utilities and environmental resources goals of the City's 2030 General Plan:

1. Provide water supply facilities to meet future growth within the City's Place of Use and assure a high-quality and reliable supply of water to existing and future residents.
2. Protect local watersheds, water bodies and groundwater resources, including creeks, reservoirs, the Sacramento and American Rivers, and their shorelines.

Economic Impacts: None

Environmental Considerations:

The Community Development Department, Environmental Planning Services Division has reviewed this project and determined that this is not a project under the provisions of the California Environmental Quality Act (CEQA), CEQA Guidelines Section 15378, as the project is an ongoing administrative activity.

Sustainability: Conducting the Sacramento River and American River source water protection programs are consistent with the City's Sustainability Master Plan in advancing the goals of conserving the use and protection of sources of water.

Commission/Committee Action: Not applicable

Rationale for Recommendation: Approval of the agreement with Starr Consulting provides for follow-up on recommendations from the Sacramento and American River Watershed Sanitary Survey reports and helps ensure an excellent quality water supply for the City's customers for current and future generations. Partnering with other local water utilities provides efficiency and a regional approach to protecting Lower American River and Sacramento River drinking water quality.

Financial Considerations: The agreement pertains to work that will be performed in relation to three distinct projects, as follows: the Sacramento River Source Water project (I14010300), the American River Source Water Project (I14010400) and the FY10-FY14 NPDES Stormwater Program (I14010200), and accordingly the agreement costs are budgeted for each project. These projects have sufficient funding for the City's FY2012/13 costs. The agreement costs will be shared with the participating water utilities according to cost-sharing Memorandums of Understanding (MOUs) (City Agreement No. 2009-0940 and City Agreement No. 2007-1169) approved by the City Council in October 2009 and November 2007, respectively. The MOUs provide for cost sharing arrangements in which the costs of the annual source water protection work is apportioned based on applicability to each participant and their agreement to participate. The cost sharing reimbursements have been budgeted in the City's FY2012/13 budget.

The cost share partners provided documentation agreeing to their agency's cost share for FY2012/13. Written confirmation of partner participation will be obtained prior to encumbering the partner agencies' cost shares for FY2013/14. The City's share for FY2012/13 and FY2013/14 is a total of \$94,915.84 and will be paid from the Water Fund (Fund 6005) and Drainage Fund (Fund 6011). The partner agencies' share of FY2012/13 and FY2013/14 is \$44,494.16.

The following table summarizes FY2012/13 and FY 2013/14 costs for City and cost share partners:

Project	Fund	Multi-Year Operating Project (MYOP)	FY2012/13	FY2013/14	2-year Total
Sacramento River Source Water Project	6005	I14010300	\$19,777.50	\$19,845.00	\$39,622.50
Sacramento River Source Water Reimbursable Project	6205	I14010302	\$12,825.00	\$12,950.00	\$25,775.00
American River Source Water Project	6005	I14010400	\$23,850.00	\$22,983.34	\$46,833.34
American River Source Water Reimbursable Project	6205	I14010402	\$9,292.50	\$9,426.66	\$18,719.16
FY10-FY14 NPDES Stormwater Program	6011	I14010200	\$5,940.00	\$2,520.00	\$8,460.00
Total			\$71,685.00	\$67,725.00	\$139,410.00

Payment for the second year of the contract services is subject to City Council approval of the FY2013/14 budgets for these projects.

Emerging Small Business Development (ESBD): Starr Consulting is a City certified Small Business Enterprise.



BACKGROUND

The City of Sacramento has three water sources for its municipal supply: the American River, the Sacramento River, and groundwater. The rivers provide approximately 85 percent of the City's supply, while groundwater provides approximately 15 percent. The City operates two water treatment plants: the E.A. Fairbairn Water Treatment Plant and the Sacramento River Water Treatment Plant. The E.A. Fairbairn Water Treatment Plant takes American River water just downstream of the Howe Avenue Bridge, and the Sacramento River Water Treatment Plant takes a blend of American and Sacramento River water just downstream of the confluence of the American and Sacramento Rivers.

The City partners with several water utilities to implement proactive source water protection programs to help protect the quality of their Sacramento and Lower American water supplies. This program includes project management by City of Sacramento staff for joint source water protection efforts with participation of other water utilities on Sacramento and Lower American Rivers, involvement as a stakeholder in the Sacramento River watershed on various issues related to drinking water quality, and conducting or supporting activities to reduce the risk from potential pollutants to the water supply. Expert support is utilized to conduct this work, and is cost shared with the partner agencies.

Key topics include the Sacramento River and Lower American River voluntary spill notification programs, in which the water utilities receive notification from upstream agencies of hazardous material spills that have potential to impact the drinking water supply, and information tracking and support for water utilities stakeholder input on topics such as the Rice Pesticide Program and Irrigated Lands Program. Other Sacramento River watershed topics are tracked as resources are available on topics such as dairies, rangeland, and river and shoreline recreation. One of the City only tasks provides technical support for development of best management practices for fire fight drainages to the Sacramento and American Rivers, their tributaries, and the City's storm drainage system.

Starr Consulting was selected for source water protection consultation services for fiscal year 2012/13 and 2013/14 through a Request for Qualifications (RFQ) process issued on May 10, 2012. Starr Consulting submitted the only statement of qualifications for source water protection consultation services. An evaluation panel consisting of staff from the City, East Bay Municipal Utility District (EBMUD), and Sacramento County Department of Water Resources (DWR) selected Starr Consulting to provide the requested services.

The Professional Services Agreement includes source water protection consultation services for expert support tracking special topics, collecting and evaluating data/information, preparing technical memorandum and reports, assisting in networking with and gathering information from other stakeholders in the watershed, preparing comment letters, and conducting meetings.

The cost of the proposed Professional Services Agreement is \$139,410, which includes

cost shared services in the amount of \$44,494.16, and \$94,915.84 for City-only services. The following table provides a summary of partner cost shares and the City cost for FY2012/13. FY2013/14 cost shares are estimated and will be confirmed with partner agencies at a later date.

	<u>FY2012/13</u>	<u>FY2013/14</u>	<u>2-Year Total</u>
Carmichael Water District	\$3,498.75	\$3,558.33	\$7,057.08
City of Sacramento	\$49,567.50	\$45,348.34	\$94,915.84
City of West Sacramento	\$1,856.25	\$1,925.00	\$3,781.25
EBMUD	\$3,813.75	\$3,867.50	\$7,681.25
Sacramento County Department of Water Resources	\$12,948.75	\$13,025.83	\$25,974.58
Total	<u>\$71,685.00</u>	<u>\$67,725.00</u>	<u>\$139,410.00</u>



PROJECT #: I14010300/I14010302/I14010400/I14010402/I14010200
 PROJECT NAME: FY2012/13-FY2013/14 Source Water Protection Consultation Services
 DEPARTMENT: Utilities
 DIVISION: Engineering

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

**TO BE USED FOR PROFESSIONAL SERVICES PERFORMED BY
 LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS OR PROFESSIONAL
 LAND SURVEYORS OR REGISTERED PROFESSIONAL ENGINEERS**

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

Starr Consulting
20897 Victoria Lane Colfax, CA 95713
530-637-5090/530-637-5732 fax

("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 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:

Starr Consulting
NAME OF FIRM

005605434
Federal I.D. No.

005605434
State I.D. No.

138719
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: _____)

Bonny Starr
Signature of Authorized Person

Bonny Starr, Principal
Print Name and Title

Additional Signature (if required)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Starr Consulting

Address: 20897 Victoria Ln, Colfax, CA 95713

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.

Bonny Starr
Signature of Authorized Representative

7/22/12
Date

Bonny Starr
Print Name

Principal
Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Elissa Callman, Senior Engineer
1395 35th Avenue Sacramento, CA 95822
916-808-1424/916-808-1497 fax/ecallman@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:

Bonny Starr, Principal Owner
20897 Victoria Lane Colfax, CA 95713
530-637-5090/530-637-5732 fax/bstarr@usamedia.tv

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 1 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 ___x___ no [check one]

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

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

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

4. Scope of Services.

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

5. Time of Performance. The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

ATTACHMENT 1 to Exhibit A

Scope of Work for Starr Consulting FY 2012/13 and 2013/14

Task 1a – Lower American River Voluntary Spill Notification Program and Sanitary Survey Follow-up (I14010400/I14010402)

Work to include 47 hours in FY13 and 45 hours in FY14 for planning and implementation of a dry run of the spill notification program, confirmation letters as needed to discharge and emergency response contacts and update of the Lower American River Water Utilities voluntary spill notification phone tree, on-call services for follow-up to watershed spills, annual review, and potentially meet with Department of Public Health (DPH) to coordinate on the program; the 92 hours comprise the work cost shared by the City of Sacramento, Carmichael Water District, Sacramento County Department of Water Resources, and EBMUD.

Task 1b – Sacramento River Voluntary Spill Notification Program (I14010300/I14010302)

Work to include 55 hours annually for preparation and implementation of a presentation and table top exercise for participating water utilities (including addition of next step response discussion), confirmation letters as needed to discharge and emergency response contacts and update of the Sacramento River Water Utilities voluntary spill notification phone tree, a dry run of the spill notification program, on-call services for follow-up to watershed spills, annual review, and potentially meet with DPH to coordinate on the program; the 110 hours comprise work cost shared by the City of Sacramento, City of West Sacramento, Sacramento County Department of Water Resources, and EBMUD.

Task 1c – American River Voluntary Spill Notification Program – City Support (I14010400)

Work to include 22.5 hours annually for expert technical support to the City on the voluntary spill notification program on the American River (including coordination with National Oceanic and Atmospheric Administration {NOAA} on river travel time) on an as needed basis, including risk and treatability for various types of potential spills, assistance with follow-up to watershed spills, expert support for operator training, or other related work, as schedule and resources allow.

Task 1d – Sacramento River Voluntary Spill Notification Program – City Support (I14010300)

Work to include 11 hours in FY13 and 10.5 hours in FY14 for expert technical support to the City on the voluntary spill notification program on the Sacramento River (including coordination with NOAA on river travel time) on as needed basis, including risk and

treatability for various types of potential spills, assistance with follow-up to watershed spills, expert support for operator training, or other related work, as schedule and resources allow.

Task 1e –Voluntary Spill Notification Program – Freeport Support (I14010302)

Work to include 5.5 hours in FY13 and 5.25 hours in FY14 to support the Freeport diversion voluntary spill notification program, verification of additional contacts and preparation of confirmation letters and related on-call services as resources allow; the 10.75 hours comprise work cost shared by the Sacramento County Department of Water Resources and EBMUD.

Task 1f – Stormwater Coordination with City Fire Department – City of Sacramento Support (I14010200)

Work to include 44 hours in FY13 and 18 hours in FY14 for coordination with the City of Sacramento to develop a Response Plan for emergency and non-emergency fire-fighting flows in accordance with the requirement from the City's Phase I NPDES Stormwater Permit. This work will include a review of the City's background information collected to date regarding City fire-fighting procedures and other municipality programs. New information collection for background development will include a site visit scheduled at the City's Fire Training facility at McClellan Air Force Base as well as a meeting with the City's Assistant Fire Chiefs to confirm current nomenclature and procedures for the various fire alarms and scenarios. This information will be processed and used to layout procedure options for the various scenarios and the suggested best management practices (BMPs) for City Department of Utilities (DOU) stormwater staff to review. Once there is consensus on possible options for the Response Plan there will be a meeting with City DOU's Drainage Collection Section and Plant Services Division to review the options for consensus on implementation. Once consensus is reached, a Draft Response Plan will be developed for City use.

The emergency fire-fighting flow response may mirror the existing notification procedures for the WTP voluntary program, but the primary goal of the Response Plan will be to notify appropriate DOU personnel of the potential need to stop any pumping operations at any drainage pumping station(s) that may be impacted by significant fire flows, and to initiate First Responders to assess the need for clean-up operations.

A Draft Response Plan will be completed by June 30, 2013. The final Response Plan for inclusion in the 2013 Annual Report will be completed by August 31, 2013.

Task 2a – Lower American River Watershed Sanitary Survey Follow-up (I14010400/I14010402)

Work to include 42.5 hours annually for on-call services for follow-up to the American River Watershed Sanitary Survey 2008 (and 2013 Update) and on-going source water protection efforts, including possible topics such technical review of plans by the United

States Bureau of Reclamation (USBR) and California Department of Parks related to the Folsom Lake Resource Management Plan or other recreation topics and tracking the California Department of Water Resources (DWR) System Reoperation Study for climate change impacts. The 85 hours comprise the work cost shared by the City of Sacramento, Carmichael Water District, and Sacramento County Department of Water Resources. Services to be provided as schedule and resources allow, upon direction of City project manager.

Task 2b – American River/Sacramento River Confluence Technical Support (I14010400/I14010402)

Work to include 10.5 hours annually as needed, for follow-up to the American River Watershed Sanitary Survey 2008 Update (and 2013 Update), Sacramento River Watershed Sanitary Survey 2010 Update, and on-going source water protection efforts on source water protection related to recreation activities at or near the confluence of the American and Sacramento Rivers. Services may include technical evaluations, preparation of comments, and expert support for discussions with other agencies and other local stewardship programs; the 21 hours comprise work cost shared by the City of Sacramento and Sacramento County Department of Water Resources. Services to be provided as schedule and resources allow, upon direction of City project manager.

Task 2c – American River Source Water Protection (I14010400)

Work to include 123 hours in FY13 and 111 hours in FY14 for follow-up to the American River Watershed Sanitary Survey 2008 Update (and 2013 Update) and on-going source water protection efforts. This includes tracking and review of the Proposed Plan for the Perimeter and Bounday Groundwater OUs (Operating Unit), providing technical coordination with Aerojet on stormwater discharge notification options, providing expert environmental engineering support for follow-up to Aerojet permit exceedences, coordination on Groundwater Extraction and Treatment (GET) E/F violations and pilot study, review CAG (Community Advisory Group) meeting minutes, conducting a site visit in FY12/13, and development of an annual summary memo documenting all activities. Other work may include tracking Regional Board products such as the Drinking Water Policy and revisions of the water quality objectives for secondary MCL constituents or follow up on new source water protection activities related to prioritized constituents from the FY 2012 analysis. Work may also include expert environmental engineering and source water protection program support on other lower American River source water protection topics, as resources allow. Services to be provided as schedule and resources allow, upon direction of City project manager.

Task 3a – Sacramento River Agricultural Issues Technical Support (I14010300/I14010302)

Work to include 82 hours in FY13 and 78 hours in FY14 for technical support and assistance, as resources allow, for technical expert support related to the Rice Pesticide Program (technical advisor), Rice Waiver Program (Review of the Long-Term Order in

FY12/13 including a more detailed review of pesticide data, Annual Report review and technical coordination on drinking water constituents, such as TOC and propanil), Sacramento Valley Water Quality Coalition (Review of the Long-Term Order in FY 12/13 including a more detailed review of pesticide data and Annual Report review), follow up on Pesticide Coordination Memorandum recommendations from FY 12, and Pesticide and Organochlorine Pesticide Basin Plan Amendments utilities stakeholder input and tracking. Services may include; contacts to other agencies (such as DPR, USEPA, UCCE), data collection and review (possibly related to rangeland or dairy management), review and update of FY 12 Pesticide Coordination Memo, assistance/technical support in developing comments (such as pesticide registrations), and other source water protection expert support. The 160 hours comprise work cost shared by the City of Sacramento and Sacramento County Department of Water Resources. Services to be provided as schedule and resources allow, upon direction of City project manager.

Task 3b – Sacramento River – Industrial Discharger Follow Up on Recommendations upstream of Sacramento River WTP (I14010300/I14010302)

Work to include 14.5 hours in FY13 and 14 hours in FY14. This will focus on McClellan AFB (Water utility contact in FY13 and NPDES permit update in FY 14), Sterling Caviar, and Empire Mine as discussed in the Technical Memorandum. Work may include contacts to regulatory agencies and websites, review of data as needed, and preparation of summaries of findings; the 28.5 hours comprise work cost shared by the City of Sacramento and Sacramento County Department of Water Resources.

Task 3c – Sacramento River Source Water Protection (I14010300)

Work to include 73.5 hours in FY13 and 71.5 hours in FY14 for follow-up to the Sacramento River Watershed Sanitary Survey 2010 Update, including expert environmental engineering and source water protection program support for topics including additional support on pesticides issues and other source water protection topics that potentially have the ability to affect source water quality. Work to include additional resources for Task 3a items. Other work may include tracking Regional Board products (such as the Drinking Water Policy, revisions of the water quality objectives for secondary MCL constituents, revisions to the beneficial use designations for the Colusa Basin Drain) or USEPA programs (such as USGS pharmaceutical study, Endocrine Disruptors Screening Program, and CCL3/4 development), or follow up on new source water protection activities related to prioritized constituents from the FY 2012 analysis. Services to be provided as schedule and resources allow, upon direction of City project manager.

****Note:** Each task incorporates time to prepare an annual program summary which will include a summary of the work completed, the key findings, and prioritization of on-going or recommended action items.

KEY PERSONNEL

Bonny Starr will represent Starr Consulting and Leslie Palencia will represent Palencia Consulting Engineers. Both are sole proprietors, as well as principal engineers, of their respective firms. Bonny will serve as the Project Manager and will lead a majority of the projects outlined in this scope and assigned by City staff. Leslie will serve as a technical specialist and will support and lead projects as decided by City staff and Bonny. Leslie will also be available to support City staff in the event of unavailability of Bonny. Both consulting firms can be available to advise and support other projects related to the City's Source Water Protection program. No work is planned to be subcontracted to other entities. If any services need to be subcontracted to specific entities, prior approval of the City's contract manager will be obtained.

SCHEDULE

The period during which the Starr Consulting services described herein will be performed will extend from approximately August 2012 through approximately June 2014. However, upon mutual consent of City and Starr Consulting, some activities may extend beyond this time period.

Notes to Scope of Work

- Contractor shall provide the City with electronic copies of all work products and data files.
- Contractor shall not make public information releases or otherwise publish/release any information obtained or produced by it as a result of, or in connection with, the performance of services under this Scope of Work without the prior written authorization from City's contract manager.
- Remaining budget from FY2013 may be utilized for assignments continuing in FY2014.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

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 \$139,410.
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:

City of Sacramento Department of Utilities
1395 35th Avenue Sacramento, CA 95822
916-808-1424/916-808-1497 fax
Attn: Elissa Callman

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 consultants to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

ATTACHMENT 1 to Exhibit B

Billable Rates

Staff	Period	Hourly Rate
Bonny Starr and Leslie Palencia	August 2012 – June 2013	\$135
Bonny Starr and Leslie Palencia	July 2013 – June 2014	\$140

Other direct charges, such as extensive copying, shipping, or travel out of the Sacramento Metropolitan area would be billed out to the City at their actual costs, with no markup. Travel outside of the Sacramento Metropolitan area would be charged at the prevailing IRS rates at the time of billing. As of January 1, 2012, the IRS rate was set at \$0.555 per mile. In the following years, the mileage rate will be updated to the new IRS rate, if any.

FY2013 funding is \$71,685, and FY 2014 funding is anticipated in the amount of \$67,725 to be encumbered after July 1, 2013 as resources are available, and pending City Council approval of FY 2014 budget and confirmation of participation by Lower American River and Sacramento River water utilities in applicable tasks. FY 2014 may include reallocation of applicable task budgets to provide for updates to cost sharing with Lower American River and/or Sacramento River water utilities.

The City Representative can approve reallocations of the above budget amounts from one task to another, and can approve carrying over unused funding from one Fiscal Year into the next, provided that the not-to-exceed amount specified in Exhibit B is not exceeded.

Budget

Task	FY13 Fund		FY13 Total	FY14 Fund		FY14 Total	Total Cost
	6005	6205		6005	6205		
1a -- Lower American River Voluntary Spill Notification Program (I14010400/I14010402)	\$1,586.25	\$4,758.75	\$6,345	\$1,575	\$4,725	\$6,300	\$12,645
1b -- Sacramento River Voluntary Spill Notification Program (I14010300/I14010302)	\$1,856.25	\$5,568.75	\$7,425	\$1,925	\$5,775	\$7,700	\$15,125
1c -- American River Voluntary Spill Notification Program -- City Support (I14010400)	\$3,037.50	\$0	\$3,037.50	\$3,150	\$0	\$3,150	\$6,187.50
1d -- Sacramento River Voluntary Spill Notification Program -- City Support (I14010300)	\$1,485	\$0	\$1,485	\$1,470	\$0	\$1,470	\$2,955
1e -- Voluntary Spill Notification Program -- Freeport Support (I14010302)	\$0	\$742.50	\$742.50	\$735	\$0	\$735	\$1,477.50
1f -- Stormwater Coordination -- City Support (I14010200)	\$5,940		\$5,940	\$2,520	\$0	\$2,520	\$8,460
2a -- Lower American River Watershed Sanitary Survey Follow-up (I14010400/I14010402)	\$1,912.50	\$3,825	\$5,737.50	\$1,983.34	\$3,966.66	\$5,950	\$11,687.50
2b -- American River/Sacramento River Confluence Technical Support (I14010400/I14010402)	\$708.75	\$708.75	\$1,417.50	\$735	\$735	\$1,470	\$2,887.50
2c -- American River Source Water Protection (I14010400)	\$16,605	\$0	\$16,605	\$15,540	\$0	\$15,540	\$32,145
3a -- Sacramento River Agricultural Issues Technical Support (I14010300/I14010302)	\$5,535	\$5,535	\$11,070	\$5,460	\$5,460	\$10,920	\$21,990

Task	FY13 Fund		FY13 Total	FY14 Fund		FY14 Total	Total Cost
3b -- Sacramento River -- Industrial Discharger Update on Key Selected Sites to SRWTP (I14010300/I14010302)	\$978.75	\$978.75	\$1,957.50	\$980	\$980	\$1,960	\$3,917.50
3c -- Sacramento River Source Water Protection (Z14010300)	\$9,922.50	\$0	\$9,922.50	\$10,010	\$0	\$10,010	\$19,932.50
TOTAL	\$49,567.50	\$22,117.50	\$71,685	\$45,348.34	\$22,376.66	\$67,725	\$139,410

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

Not furnish any facilities or equipment for this Agreement; or

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

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

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

notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services 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 claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties 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, that arise out of, pertain to or relate to any negligent act or omission, recklessness or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.
- 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." YBS (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 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.