



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 10/16/2012

Report Type: Consent

Title: Agreement: Water Plant Human Machine Interface (HMI) Development Design Services

Report ID: 2012-00744

Location: Citywide

Recommendation: Pass 1) a Resolution establishing a new CIP project for Trihedral VTScada Software Development (Z14120400), and authorizing the following budget transfers to the new project: a) \$218,500 from the Pump Station Radio Telemetry CIP budget (X14000200); b) \$172,887 from the SCADA System Upgrade CIP budget (Z14000900); and c) \$53,880 from the Information Technology Project CIP budget (Z14003600); and 2) a Motion authorizing the City Manager or the City Manager's designee to sign a professional services agreement with Westin Engineering, for screen development to replace the existing Supervisory Control and Data Acquisition (SCADA) HMI software for one potable water production plant and three wastewater treatment plants, for an amount not to exceed \$445,267.

Contact: Bill Busath, Interim Engineering Manager, (916) 808-1434; Dave Hansen, Supervising Engineer, (916) 808-1421 - Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Information Technology

Dept ID: 14001351

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Agreement

City Attorney Review

Approved as to Form
Joe Robinson
10/9/2012 5:22:24 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/24/2012 4:07:37 PM

Approvals/Acknowledgements

Sandra Talbott, Interim City Attorney

Shirley Concolino, City Clerk
John F. Shirey, City Manager

Russell Fehr, City Treasurer

Department Director or Designee: Dave Brent - 10/2/2012 10:20:17 AM



Description/Analysis

Issue: The City of Sacramento, Department of Utilities (DOU), utilizes a Supervisory Control and Data Acquisition (SCADA) system which allows for monitoring, control and alarming of its water, sewer and drainage operational facilities. Currently, the SCADA system's Human Machine Interface (HMI) software is out of date and jeopardizing the system's overall reliability. The Department of Utilities has purchased Trihedral's Visual Tag System HMI, but needs professional assistance to implement the HMI software upgrade into SCADA. Funding for this Professional Service Agreement (PSA) has been identified in three existing capital improvement projects, but needs to be consolidated under one single project for financial tracking purposes.

Therefore, in addition to approving the PSA for upgrading SCADA's Human Machine Interface software, staff is requesting that a new capital project be established as Trihedral VTScada Software Development (Z14120400). The project scope includes screen development in VTS to replace existing SCADA software for one fresh water production plant and three wastewater treatment plants.

Policy Considerations: The proposed action is consistent with recommendations submitted by the City Auditor to the Council's Audit Committee in the "Sacramento Department of Utilities Operational Efficiency and Cost Savings Audit." Recommendation G recommended that the completion of the SCADA HMI software system replacement be accelerated.

Economic Impacts: None.

Environmental Considerations: The Community Development Services Department, Environmental Planning Services Manager has determined that the project is exempt from the California Environmental Quality Act (CEQA), under CEQA Guidelines Section 15301, Existing Facilities. The project consists of the operation of existing utility facilities with new software, involving no expansion of use beyond that existing.

Sustainability: The existence of a properly functioning SCADA system promotes sustainability by allowing the City to continue to monitor, control and alarm the water treatment plants, combined wastewater treatment plants, drainage lift stations, combined sewer system (CSS)/sewer lift stations, water reservoirs, wells, turnouts and combined system level monitoring locations located throughout the city both locally and remotely. By monitoring and controlling the sites remotely, there is a reduced need to send vehicles and personnel to the site, providing a more efficient use of City resources.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The City Auditor's recommendation G in the "Sacramento Department of Utilities Operational Efficiency and Cost Savings Audit" recommended accelerating Completion of SCADA HMI Software System Replacement. DOU has

purchased new SCADA software at a cost of approximately \$450,000. The value of this purchase is depreciating with time, and the reliability of the existing system will begin to decrease significantly over time until the HMI software is replaced. Further delay in implementation of the new software will result in lost operational efficiency and an increased risk of SCADA system failures. This, in turn, could disrupt water, wastewater or drainage operations.

Financial Considerations: The proposed agreement with Westin Engineering is for an amount not-to-exceed \$445,267. To fund the agreement DOU proposes that a new CIP project be established as Trihedral VTScada Software Development Z14120400 and the following transfers be made to the new project: 1) \$218,500 from the Pump Station Radio Telemetry CIP budget (X14000200, \$75,000 from the Wastewater Fund (Fund 6006) and \$143,500 from Storm Drainage Fund (Fund 6011)); (2) \$172,887 from the SCADA System Upgrade CIP budget (Z14000900, Water Fund (Fund 6005)); and 3) \$53,880 from the Information Technology Project CIP budget (Z14003600, \$15,812 from Fund 6006 and \$38,068 from Fund 6011). Summarized below is a table illustrating the transfers to the new project:

Transfer from:

Project	Description	Fund	Amount
X14000200	PUMP STATION RATIO TELEMTRY	6006	\$ 75,000.00
		6011	\$ 143,500.00
Z14000900	SCADA SYSTEM UPGRADE	6005	\$ 172,887.00
Z14003600	INFORMATION TECHNOLOGY	6006	\$ 15,812.00
		6011	\$ 38,068.00
		Total	\$ 445,267.00

**Transfer total amount of \$445,267 to
Trihedral VTScada Software Development (Z14120400)**

Emerging Small Business Development (ESBD): Westin Engineering is not an emerging or small business enterprise.

Background

The City of Sacramento, Department of Utilities (DOU), utilizes a supervisory control and data acquisition (SCADA) system which allows for local and remote monitoring, control and alarming of its water, sewer and drainage operational facilities located throughout the city. The SCADA system is critical to the daily operations of each of these facilities and also retrieves and records operational data and alarms from each of the sites.

The DOU has utilized the same SCADA software application (FIX32) for over 15 years and the software has reached its end of life. Since the software is no longer supported and technical support is not available, the DOU purchased Trihedral's Visual Tag System (VTS) Human Machine Interface (HMI) software at a cost of approximately \$440,600. This software needs to integrate with the existing programmable logic controllers (PLC) and replace the functionality of the current SCADA HMI system.

DOU is transitioning from the old HMI software to the new Trihedral VTS. Currently the sump, well, turn out and reservoir screens and controls are being integrated by Department of Utilities Staff. The screens for the E. A. Fairbairn water treatment plant are being developed by Trihedral as part of the contract associated with the software purchase. The remaining sites (SRWTP, CWTP, Sump 2 and Pioneer Reservoir) each have interface screens that graphically represent the SCADA monitors and controls which need to be transitioned to the new software. Installation and use of this software is being delayed by staffing vacancies and staffing cuts.

According to the City Auditor's findings in the "Sacramento Department of Utilities Operational Efficiency and Cost Savings Audit", the value of this purchase is depreciating rapidly with time, and the reliability of the existing system will begin to decrease significantly over time until the software is replaced. It also states that further delay in implementation of the new software will result in lost operational efficiency and an increased risk of SCADA system failures. This, in turn, could disrupt water, wastewater or drainage operations. The findings also recommend that DOU either obtain the internal resources necessary to complete this project, hire temporary staff to supplement DOU staff, or procure the services of an outside company to complete the upgrade.

Since internal resources are not sufficient to complete this project in a timely manner, the DOU issued a Request for Proposals (RFP) for the required software integration services. Responses were received from the following ten consultants:

- A.T.E.E.M. Electrical
- Black & Veatch
- Carollo
- JSP Automation
- MWH
- Saber Engineering

- Stantec
- Tesco Controls
- Westin Engineering
- Wunderlich-Malec

A committee of five individuals was chosen to review the proposals, including one person from the City's Information Technology Department.

Through the evaluation process, Westin Engineering was selected as the most qualified firm to provide services to complete this transition. Westin Engineering, which is located in Rancho Cordova, was chosen because their proposal was the most responsive and thorough of all bidders. Their proposal included all elements necessary for a successful project which included schedules, proposed meetings, testing plans, staff training, documentation and a complete description of their approach. Westin's approach was determined to be the best of all bidders since their plan is to use a contractor which has extensive Trihedral experience to assist them. The committee believed this to be the best approach since none of the bidders had worked on any major projects using Trihedral.

The proposed Professional Service Agreement is for screen development to replace the existing SCADA HMI software for one potable water production plant and three wastewater treatment plants using Trihedral's VTS HMI software.



RESOLUTION NO.

Adopted by the Sacramento City Council

ESTABLISHING CIP PROJECT FOR TRIHEDRAL VTSCADA SOFTWARE DEVELOPMENT (Z14120400), AND AUTHORIZING BUDGET TRANSFERS TO THE NEW PROJECT

BACKGROUND

- A. The City of Sacramento, Department of Utilities (DOU), utilizes a supervisory control and data acquisition (SCADA) system which allows for monitoring, control and alarming of its water, sewer and drainage operational facilities.
- B. The DOU purchased Trihedral’s Visual Tag System (VTS) Human Machine Interface (HMI) software to replace the current outdated SCADA software, which requires screen development to implement the new software for one potable water production plant and three wastewater treatment plants.
- C. To fund this work the DOU proposes the establishment of a new Capital Improvement Program (CIP) and related budget transfers.

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

- 1. A new CIP project is established for Trihedral VTScada Software Development (Z14120400).
- 2. The City Manager or City Manager’s designee is authorized to transfer funds to Z14120400 as follows:

Transfer from:

Project	Description	Fund	Amount
X14000200	PUMP STATION RATIO TELEMETRY	6006	\$ 75,000.00
		6011	\$ 143,500.00
Z14000900	SCADA SYSTEM UPGRADE	6005	\$ 172,887.00
Z14003600	INFORMATION TECHNOLOGY	6006	\$ 15,812.00
		6011	\$ 38,068.00
		Total	\$ 445,267.00

**Transfer total amount of \$445,267 to
Trihedral VTScada Software Development (Z14120400)**



PROJECT #: Z14120400
PROJECT NAME: Department of Utilities Water Plant HMI Development
DEPARTMENT: Utilities
DIVISION: Engineering Services

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

**TO BE USED FOR DESIGN 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

Westin Engineering, Inc.
3100 Zinfandel Drive, Suite 300, Rancho Cordova, California 95670
Phone: (916) 889-8600

(“CONTRACTOR”), who agree as follows:

- 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.
- 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.
- 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.
- 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

CONTRACTOR:

By: _____

Westin Engineering, Inc.
NAME OF FIRM

Print name: _____

94-2898709
Federal I.D. No.

Title: _____

1135828
State I.D. No.

For: John F. Shirey, City Manager

121364
City of Sacramento Business Op. Tax Cert. No.

APPROVED TO AS FORM:

TYPE OF BUSINESS ENTITY (*check one*):

City Attorney

- ____ Individual/Sole Proprietor
- ____ Partnership
- Corporation (*may require 2 signatures*)
- ____ Limited Liability Company
- ____ Other (*please specify:* _____)

ATTEST:

City Clerk

Jeff Ludwig
Signature of Authorized Person

Attachments

Jeff Ludwig CFO
Print Name and Title

- 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

Additional Signature (*if required*)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Westin Engineering, Inc

Address: 3100 Zinfandel Drive, Suite 300, Rancho Cordova, California 95670

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

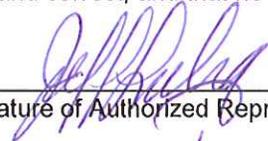
Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

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

7/19/12

Date

Jeff Liebig

Print Name

CFO

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Tedd M. Vallance, Information Technology Supervisor
1395 35th Avenue, Sacramento, California 95822
Phone: (916) 808-5633 / Email: tvallance@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:

Vincent Brashear, PE / Principal Engineer
3100 Zinfandel Drive, Suite 300, Rancho Cordova, California 95670
Phone: (916) 889-8600 X6905

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 required for this Agreement. If required, such coverage must be continued for at least three (3) 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.** *[Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]*

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

Contract Scope of Services

Introduction

The City of Sacramento, Department of Utilities (DOU), utilizes a supervisory control and data acquisition (SCADA) system which allows for local and remote monitoring, control and alarming of its water, sewer and drainage operational facilities located throughout the city. The SCADA system is critical to the daily operations of each of these facilities and also retrieves and records operational data and alarms from each of the sites.

The DOU has utilized the same SCADA software application (FIX32) for over 12 years and the software has reached its end of life. Since the software is no longer supported and technical support is not available, the DOU purchased Trihedral's Visual Tag System (VTS) Human Machine Interface (HMI) software. This software needs to integrate with the existing programmable logic controllers (PLC) and replace the functionality of the current SCADA HMI system.

This Professional Service Agreement (PSA) is for screen development to replace the existing Supervisory Control and Data Acquisition (SCADA) Human Machine Interface (HMI) software for one (1) Fresh water production plant and two (2) wastewater treatment plants using Trihedral's Visual Tag System (VTS) HMI software. The existing Department of Utilities (DOU) SCADA system monitors and controls the following:

2	Fresh Water Treatment Plants
3	Waste Water Treatment Plants
100	Storm Sumps
41	Sewer Sumps
3	Combined Wastewater / Storm Sumps
29	Fresh Water Wells
11	Fresh Water Reservoirs
10	Turn Out Stations

Currently the sump, well, turnout and reservoir screens and controls are being integrated by Department of Utilities Staff. The screens for the second fresh water treatment plant are being developed by Trihedral as part of the contract associated with the software purchase. All of the screens developed by Trihedral and DOU will be made available for use by the CONTRACTOR(s) awarded the Professional Services Agreement contract.

The DOU is requesting integration of the Sacramento Water Treatment Plant (SRWTP), Sump 2/2A, Combined Water Treatment Plant (CWTP) and Pioneer Reservoir.

General HMI Requirements

DOU is transitioning from Intellution Fix32 HMI to Trihedral VTS. SRWTP, Sump 2/2A, CWTP and Pioneer Reservoir each have interface screens that graphically represent the SCADA monitors and controls. The approximate number of main screens for each site is as shown in the table below.

Site	Number of Screens
CWTP	33
Pioneer	18
SRWTP	45
Sump 2	19

In addition to the major pages, there are various control and navigation popup windows which may or may not be required when making the transition to VTS. DOU is not necessarily looking to recreate all the pages exactly. All of the existing functions must, of course, be transferred to the new HMI and the screens should be similar enough that plant operators will need minimal training on the new system.

The primary objective is to create screens that utilize the abilities of VTS, recreating the functionality as simply as possible. There is no need to duplicate the Fix32 HMI screens exactly.

Look and Feel

The look and feel of the navigation will not match the existing Fix32 HMI. DOU has established color and style guidelines for the new HMI. All screens developed for VTS will adhere to the new DOU guidelines.

Colors

Background for all screens will be grey. Red denotes an active device, open circuit or in alarm, yellow denotes transition and green denotes off, closed circuit or not in alarm. In addition, alarms for analog values, such as reservoir levels, transition from aqua (LOLO Alarm), lime green (LO Alarm), blue (normal), fuchsia (HI Alarm), and Red (HIHI Alarm).

Navigation

VTS has a standard navigation tree that will be utilized. All screens for a single sight shall be included in that site's branch of the tree. Sub-branches may also be utilized. The side bar navigation used in Fix32 will not be necessary or desired. The DOU Operators do like quick link buttons to screens they use often. These can be easily added by the DOU staff. The CONTRACTOR will not be responsible for adding all quick links that may be required.

Input / Output

All input and output values from the SCADA network shall be clearly labeled with units of measure when applicable. Alarms will be shown in either green or red. Analog values can either be black or in red or green to show alarm state.

Function

All of the processes represented in the existing Fix32 shall be recreated in the new VTS HMI with the following exceptions:

- Execution of external applications
- Queries to external databases

The existing Fix32 HMI has some links to external applications, not all will be required in the new HMI. The CONTRACTOR will not be required to identify or include any external application links.

In addition, there are some scripts that make queries to a SQL Server. DOU staff will add these functions as required. The CONTRACTOR will not be responsible for any queries to external databases.

Data Tags

DOU has imported the Fix32 Tags into the VTS Application. The naming convention has been altered from that of Fix32. In cases where the tags have not been renamed, the CONTRACTOR will notify DOU that tags will need to be renamed.

Naming Convention

Tag names will use English words separated by spaces. The order of the words is as follows:

[Site Name] [Area or Device type] [Device or Measurement Type] [Designator][Description]

The site name will be the acronym used to identify the site (e.g. SRWTP). The area is a sub area of the site (e.g. Basin 1 or Filter 4). If there is not a specific area, leave that portion out. The device type would be a pump, valve, vacuum etc. The designator would be a number or name that uniquely identifies the device in question. If there is no designator, leave that out as well. The Description is a brief 1 to 3 letter phrase that describes the tag's purpose.

Examples:

SRWTP Filter 1 Running
Pioneer Wall Wash Valve 90120 Open
EAFWTP Reservoir 2 Level
Pioneer Flow Effluent To River
SRWTP Intake Pump 5 Fault

Security

All control operations (e.g. pump and valve operation, inhibiting alarms, set point input etc.) are restricted to specified security groups. All such operations will reside on windows with restricted access.

Testing

All monitors and controls shall be verified to work properly. The CONTRACTOR will schedule testing sessions with DOU Staff. Testing can be done all at once or piecemeal as long as testing sessions are scheduled in advance. DOU needs to provide staff assistance and supervise exercising any controls. All problems shall be fixed by the CONTRACTOR unless it is determined that the problem pre-existed in the current Intellution Fix32 HMI. All fixes will be verified and approved by DOU Staff. The CONTRACTOR shall be responsible for tracking all detected problems to resolution. All problems encountered during testing shall be documented and included in progress reports to DOU Staff. This is to ensure all problems are resolved before project completion.

PLC Programming

All of the PLC's on the DOU SCADA system are programmed. No additional programming should be required to integrate the new HMI. If there are cases when programming changes need to be made, they will be completed by DOU staff unless the CONTRACTOR is already responsible for the changes and/or additions under another, unrelated contract.

Equipment

DOU will provide all the computer equipment required to launch the VTS application. DOU will purchase any additional equipment needed to successfully launch the VTS HMI.

Schedule

The CONTRACTOR shall provide a schedule of project milestones and events and shall deliver a monthly written report of progress to DOU Staff. The report shall include the following items:

- Progress estimates and milestone completions
- Description of problems requiring DOU intervention
- Testing schedule when applicable
- Testing results and problem resolution report

Scope of Services

The scope of services has been structured around a common set of tasks that apply to each of the three facilities. The project has divided into four phases for the three facilities being upgraded. The three phases of the project are designated as follows:

- Phase 100 - Pioneer
- Phase 200 - SRWTP
- Phase 300 - Sump 2
- Phase 400 - CWTP

100-Series Tasks - Project Management

Task 110 General Project Management

From planning through close out, the CONTRACTOR will ensure that the Water Plant HMI Development project results are consistent with the City of Sacramento's goals and objectives by applying proven project management principles:

- **Project Communications:** Effective communication minimizes surprises and facilitates stakeholder buy-in. The CONTRACTOR will utilize a consistent set of project communications to keep the City informed of project status.
- **Project Plans:** The CONTRACTOR will work with the City to develop a customized project plan for the Water Plant HMI Development project. The CONTRACTOR will submit a Project Management Plan. This plan will define and manage scope, schedules, budgets, resource requirements, and roles and responsibilities.
- **Project Controls:** As part of the project planning process, the CONTRACTOR will define and document the project controls for scope, budgets and schedules. On a monthly basis, the CONTRACTOR will monitor key parameters to ascertain progress against the baseline. This review will help to identify instances for which corrective action may be required and help them craft the necessary corrective action plan.
- **Quality Assurance/Quality Control (QA/QC):** Project quality processes ensure that the project achieves its purpose. The CONTRACTOR's QA/QC program will identify appropriate actions, forms, documentation, approvals and decision processes. As part of the CONTRACTOR's QA/QC program, an independent CONTRACTOR Principal Engineer will conduct a review of all project deliverables.

Task 120 Maintain Project Schedule

The CONTRACTOR will develop and maintain a project schedule that includes a major tasks and milestones associated with the scope of services. Within two weeks after the project kickoff meeting, the CONTRACTOR will submit an initial project schedule for review. The CONTRACTOR's project schedule will clearly show the critical path for the HMI Development activities and will be organized to support the work breakdown structure. The CONTRACTOR is to utilize Microsoft Project as a scheduling tool.

Within two (2) weeks after the initial schedule has been reviewed and approved, the CONTRACTOR will submit a baseline schedule that incorporates the review comments. Each activity will show start and end dates, duration, and dependencies. The schedule will reflect

national holidays and non-work days.

The CONTRACTOR's project schedule will be updated on a monthly basis. The actual start and stop dates for all activities will be indicated, and adjustments in the task sequencing or durations will be reflected.

Each update of the project schedule will include the following:

- Narrative Report – detailed report summarizing the status of all activities, major scope changes, key risks and mitigation plans, delays, concerns, and problems. The report will also explain any changes made to the schedule, including changes to the logic sequence, descriptions, and task durations.
- Network Diagram (Gantt Chart) – provided in 11" X 17" format.
- Summary Schedule – this version of the schedule will have the subtask detail collapsed and will include activity ID, activity name, duration, float, start date, finish date, predecessors, and successors for all major tasks.
- Detailed Project Schedule – this version of the schedule will be the same as the Summary Schedule, but will show the information of all tasks and sub-tasks.
- Critical Path – this analysis will identify all activities that are on the critical path along with the float for each activity.

The CONTRACTOR will submit five (5) paper copies of each monthly progress schedule report along with a pdf version. The schedule will be printed in 11" X 17" format.

Task 130 Develop Monthly Status Reports

The CONTRACTOR will submit monthly status reports to the City. The progress reports will be formatted to summarize the work completed for the current month and the work planned for the following month. The progress reports will also provide a task-by-task analysis of budget expended versus progress to date. If the expenditures for any task are significantly out of proportion to progress, the report will include a discussion of the contributing factors and a proposed plan for correcting the situation.

In addition to the information stated above, the status report will include the following information:

- Detailed and summary schedules
- Percent spent
- Current activities
- Deliverables/milestone status
- Up-coming work
- Action items by others
- Potential changes

In addition to the monthly reports, the CONTRACTOR will submit reports on an as-needed basis in situations for which a significant change in project scope or direction may occur.

Task 140 Conduct Monthly Progress Meetings

The CONTRACTOR will conduct a monthly progress meeting as a follow up to the monthly status report. The CONTRACTOR will develop a meeting agenda for each meeting and post it to the project web site at least three business days prior to each meeting. The CONTRACTOR will develop minutes for each meeting and post them to the project web site within three working days after the meeting. The CONTRACTOR will be responsible for tracking action items identified in the meetings.

100-Series Project Management Deliverables

- Monthly Status Reports in PDF format.
- Draft Workshop agendas, handout materials, and meeting minutes in MS Word format.
- Final Workshop agendas, handout materials, and meeting minutes in PDF format.
- General coordination correspondence and communications.

200-Series Tasks - HMI Screen Development Services

Following are detailed task descriptions for HMI Screen Development services. The tasks below describe the process that will be used for development of the HMI screens for each of the three facilities included in the project except Development Station Setup and Lead HMI Programming Workshop tasks are one-time only.

Task 210 Development Station Setup

The CONTRACTOR will setup workstations with the same version of VTS software as the City is currently using. The CONTRACTOR will collect City collateral needed to do the HMI Development. The following items will be supplied upon request:

- Tag database change sets
- Fix32 applications
- PLC programs
- P&IDs
- SCADA standards
- Fairbairn plant HMI screens, objects, etc.

In order to ensure consistency between the software applications developed by members of the configuration team and to ensure a common understanding between the City and the CONTRACTOR, the CONTRACTOR will perform a detailed review of existing P&IDs, PLC programs, existing Fix32 HMI applications, and the new VTS Fairbairn WTP HMI system to determine the types of devices/equipment which require standardization and their associated functionality.

Task 220 Lead HMI Programming Workshop

Because the tag database and existing Fix32 screens are being provided by the City it will be unnecessary to discuss the layout of specific SCADA screens. However, it will be very

important to discuss new standards and practices the City has adopted with the VTS software. Also important will be discussing the issue of legacy tags in the existing Fix32 database. It will be very undesirable to load legacy tags on the new system. Our approach is to identify and eliminate the legacy tags prior to importing the database into VTS. We believe this will save much trouble-shooting effort later on.

The goal of this workshop will be for all team members to reach consensus on the path forward for each topic in order to ensure that the programming stays on schedule.

Three (3) days after the conclusion of the workshop, The CONTRACTOR will submit draft meeting minutes to the project team for review and comments. Once comments have been received and incorporated, the CONTRACTOR will submit final meeting minutes to the project team.

Task 230 Static HMI Display Screen Development

Static HMI display screens will be developed based on the HMI programming workshop and on all of the collateral in the previous tasks. These static screens will depict the monitored processes as they are currently depicted in the Fix32 system.

An initial set of 10 static screens will be developed completely; then a half-day workshop will be held to review the development methodology and the general "look and feel" of the screens. Any popup screens associated with the processes depicted on the draft screens will also be developed. The draft static screens and popups will be printed and submitted to the City for review. Comments will be gathered during the workshop and incorporated into the screen development process. This process will ensure that our team makes any necessary course corrections prior to completing the bulk of the work.

Task 240 HMI Development

With the approval of the static HMI screen set, the CONTRACTOR will have clear direction for the balance of the HMI screen development. The CONTRACTOR will use the existing Fix32 screens to develop a cross reference chart for which tags are populated in which screens. This cross reference chart will enable them to keep track of the tag usage as the new screens are developed. This is an important detail since the proper tags need to be displayed on their associated screens absolutely correctly. The cross reference list will also provide a basis for quality checking and for developing test plans.

Internal Quality Assurance testing will be conducted during the HMI development, utilizing the actual PLC programs for input and the tag database and cross reference chart as a basis.

Tag Database Development

Working from the change set provided by the City, the CONTRACTOR will begin the HMI development by eliminating the legacy tags to create a new VTS tag database for each of the three facilities. The new database will then be imported and spot checked for correctness.

Screen Development

Using the same methodology used in the static screen development and using information learned from the half-day workshop the CONTRACTOR will develop the balance of the

screens. Using the cross reference chart developed the CONTRACTOR will link the tags the proper screens. The control interface (control from the HMI) will be implemented via control popups. All navigation links will be added.

Alarm/Event Development

Alarms and events will be defined based on the existing Fix32 configuration. Alarm summary screens similar to the Fix32 screens will be developed for each facility.

Task 250 Trending

A set of custom trend screens will be developed for the system operators. These trend screens will be predefined for ease of access by system operators. The trend screens will pull information from the database and display it for the operator.

200-Series Tasks HMI Screen Development Deliverables

- Draft Static HMI Screen Submittal – One (1) electronic copy in native and PDF format posted on the project Sharepoint site.

300-Series Tasks – Factory Testing

Task 310 Configuration Factory Testing

As the CONTRACTOR completes the HMI configuration efforts, the CONTRACTOR will begin the development of a Configuration Factory Acceptance Test (FAT) plan. The Configuration FAT plan will outline a step-by-step testing methodology to prove the functionality of the SCADA system.

The Configuration FAT plan will be developed and submitted for review. After a review period, comments will be incorporated into the final FAT plan.

The CONTRACTOR will conduct an “internal” Configuration FAT, utilizing the test plan and documenting the results. The CONTRACTOR will supply the completed internal FAT documentation to the City for review prior to scheduling the formal Configuration Factory Acceptance Test.

The CONTRACTOR will conduct the Configuration FAT, with witnessing by the City. This Factory Test will fully test the integration of the HMI configuration with the PLCs. This testing environment will allow the City a final review of the configured system prior to the field installation task.

At the successful completion of the Configuration FAT, testing documentation will be submitted to the City for review and approval. At this point, the CONTRACTOR will also install the SCADA application at the associated facility. The new application will be configured for parallel operation with the existing Fix32 HMI system, so that the new system will not be in control of the facilities until after field testing has been completed.

The City will appoint a representative empowered to sign the test forms as tests are completed. The representative’s signature denotes that the test was witnessed. The City’s representative will also indicate if the test was Accepted, Accepted as Noted, or Rejected as

Noted.

Task 310 Configuration Services Deliverables

Each of the following submittals will be developed for each of the four facilities included in this project.

- Factory Acceptance Test Plan Submittal - One (1) electronic copy in native and PDF format posted on the project site.
- Factory Acceptance Test Results - One (1) electronic copy in PDF format posted on the project site.

400-Series Tasks - Commissioning Services

Task 410 Develop Transition Plan

The CONTRACTOR will develop a transition plan that lays out how the facility will be transitioned from the old system to the new VTS system. Because the transition involves operational facilities the CONTRACTOR will engage the Operations department in the development of the transition plan. The CONTRACTOR will conduct two (2) half-day workshops (1 facility at initial workshop, and 2 facilities at second workshop) to work out the best approach for transitioning the systems. The goal of the workshop is to define a transition approach that causes the least amount of process upset and downtime. Operations will provide critical feedback for this task. The CONTRACTOR will use this workshop to determine to what extent parallel commissioning can take place.

The CONTRACTOR will develop a draft transition plan based on the workshop outcome and submit it to the City for review. Following a review period, the CONTRACTOR will incorporate the review comments and submit the final transition plan.

Task 420 Site Acceptance Test

The CONTRACTOR will develop detailed Site Acceptance Test plans for each facility. These SAT plans will guide the commissioning team to ensure that all required functions are operating properly on the "live" system. The scheduling of SAT will be closely coordinated with Operations.

The SAT will verify and confirm that each and every input and output is linked to the correct tag in VTS and that the proper animation is being displayed on the associated screens. The methodology of the SAT is similar to that of the FAT except that it is conducted on the actual "live" system. As each area, system or subsystem of the plant is transitioned to VTS, the team will be required to complete site testing of the transitioned piece. All network connections to the PLC will need to be completed prior to the commencement of the site testing. The City will be responsible for PLC communications. Since the existing PLC code and process instrumentation are not being modified on this project, the testing will consist of forcing values in the PLC and documenting the response on the HMI screens. The City will appoint a representative empowered to sign the test forms as tests are completed. The representative's signature denotes that the test was witnessed. The City's representative will also indicate if the test was Accepted, Accepted as Noted, or Rejected as Noted.

400-Series Tasks Commissioning Services Deliverables

Each of the following submittals will be developed for each of the three facilities included in this project.

- Transition Plan Submittal - One (1) electronic copy in native and PDF format posted on the project Sharepoint site.
- Site Acceptance Test Plan Submittal - One (1) electronic copy in native and PDF format posted on the project Sharepoint site.
- Site Acceptance Test Results - One (1) electronic copy in PDF format posted on the project Sharepoint site.
- Final HMI Screen prints – One (1) electronic copy in PDF format posted on the project Sharepoint site.
- Final Tag Database Listing – One (1) electronic copy in Microsoft Excel format and PDF format posted on the project Sharepoint site.
- Draft Workshop agendas, handout materials, and meeting minutes in MS Word format posted on the project Sharepoint site.
- Final Workshop agendas, handout materials, and meeting minutes in PDF format posted on the project Sharepoint site.
- General coordination correspondence and communications posted on the project Sharepoint site.

500-Series Tasks - Training and Documentation Services

Task 510 Provide O&M Training

The amount of training required by Operations and Maintenance staff will be minimal for two reasons: 1) the City is already using VTS HMI software for other facilities in the water and sewer system, and 2) the new screens will be developed based upon the existing Fix32 screens with which O&M personnel are already familiar.

O&M training will consist of one (1) half-day workshop to become familiar with any changes in the screens from the Fix32 screens.

600-Series Tasks – As-Needed Support Services

Task 610 Provide Support Services for WTP

The CONTRACTOR will provide support services for the three facilities for a period of six (6) months. The support services will be delivered on an on-call, as-needed basis. The CONTRACTOR will respond to the request for services within two (2) business days of the request. The CONTRACTOR will allot up to 68 hours of on-call support.

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 \$445,267.00.
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 thirty (30) days of 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, California 95822
Phone: (916) 808-1426
Attn: Annette Atkins

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. CONTRACTOR shall not be responsible for any costs incurred by the CITY to perform any such audit.
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

Westin Engineering, Inc.

SACRAMENTO DOU PROJECT RATE SHEET FOR HMI CONFIGURATION

Valid Thru Westin's December 2012 Accounting Cycle

LABOR RATES		Engineering
Code	Category	Hourly Rates
210	• Principal in Charge	\$197
220	• Project Manager / QA-QC	\$185
230	• Configuration Team Lead	\$130
240	• Staff Configuration Engineer	\$120
250	• Associate Configuration Engineer	\$100
260	• Senior HMI Technician	\$90
270	• Staff HMI Technician	\$80
170	• Project Administrator	\$80
199	• Clerical	\$65

The above labor rates do not include sales or service taxes, if any.

Non Labor Costs: Subcontract and other direct expenses will be billed at cost, plus 10%. These costs may include but are not limited to travel, mail/shipping, outside printing & binding, subcontractor charges, project equipment/software.

(Mileage will be expensed per current IRS guidelines at the time of travel).

Westin Standard Rate sheets are increased annually on January 1st of each year. If the contract extends beyond January of any year, a rate increase can be expected. Any annual increase in hourly rates shall become effective 30 days after CITY receives written notice of the increase.

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 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 or by any person or entity that obtains such information from the 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. CONTRACTOR shall not be liable to CITY for any costs incurred by CITY in the defense of any action, claim, suit, cause of action or position thereof that is determined by a court of competent jurisdiction to be attributable to the sole negligence, recklessness, or willful misconduct of CITY, its officers or employees.
- 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 work 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." _____ (CONTRACTOR initials)

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

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of

CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

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

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

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies

shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

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

F. Subcontractors

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

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

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

sanctions as it may determine to be appropriate including, but not limited to:

- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
- (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

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

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

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
- A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the 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.

LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE PROGRAM

NOTE: Proposers must provide responses to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of the proposal.

1. LBE TWO PERCENT (2%) BID EVALUATION PREFERENCE

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise Preference program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities.¹ A bid or quotation submitted by a firm that is located within Sacramento city and/or the unincorporated county of Sacramento will receive a two percent (2%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 2% bid evaluation preference, the bid of an LBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be a qualified as a LBE prior to the time bids are received.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento:
 - a. The LBE's principle business office or workspace; or
 - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

A. LOCAL BUSINESS ENTERPRISE (LBE)

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

- YES** - the firm submitting the bid is qualified as a local business enterprise.
- NO** - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

If the response to the above is YES, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address*:

* Address must be a physical address for the basis of location, this excludes P.O. Box addresses.

¹ The LBE Program provides for a two percent (2%) preference on all City procurement opportunities under \$100,000. For professional service contracts only, this preference also applies to procurement opportunities of \$100,000 or more.

All future solicitations will incorporate the following standard language to notify potential bidders of the City Council policy regarding businesses headquartered in Arizona.

City of Sacramento Boycott of Arizona-Headquartered Businesses

On June 15, 2010, the Sacramento City Council adopted Resolution No. 2010-346 opposing two Arizona laws (SB 1070 and HB 2162) that will allow Arizona police to arrest individuals suspected of being unlawfully present in the United States and to charge immigrants with a state crime for not carrying immigration documents. Sacramento City Council Resolution No. 2010-346 also called for a boycott of the State of Arizona and businesses headquartered in Arizona until Arizona repeals or a court nullifies SB 1070 and HB 1262. Resolution No. 2010-346 provides, in pertinent part, that "where practicable and where there is no significant additional cost to the City, the City of Sacramento shall not enter into any new, amended, extended or supplemental contracts to purchase or procure goods or services from any business or entity that is headquartered in Arizona ..."

Pursuant to the provisions of Resolution No. 2010-346, the City may determine that a bid from a business or entity that is headquartered in Arizona is nonresponsive and the City may reject the bid on that basis.

Bidders that are headquartered in the United States shall certify in the space below the state where the bidder is headquartered:

State Where Bidder is Headquartered

6/23/10

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)																			
Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.																			
	<table border="1" style="margin: auto;"> <tr><td colspan="9" style="text-align: center;">Social security number</td></tr> <tr> <td style="width: 20px; height: 20px;"> </td><td style="width: 20px; height: 20px;"> </td> </tr> </table>	Social security number																	
Social security number																			
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.	<table border="1" style="margin: auto;"> <tr><td colspan="9" style="text-align: center;">Employer identification number</td></tr> <tr> <td style="width: 20px; height: 20px;"> </td><td style="width: 20px; height: 20px;"> </td> </tr> </table>	Employer identification number																	
Employer identification number																			

Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined below).	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.	

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions
 Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual.	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

2011 Nonresident Withholding Allocation Worksheet

587

Part I Withholding Agent

Withholding agent's name _____

Address (number and street, PO Box, or PMB no.) _____

Apt. no./Ste. no. _____

City _____

State _____

ZIP Code _____

Part II Nonresident Payee (Complete Part II through Part V and return this form to the above withholding agent)

Payee's name _____

Owner's full name if sole proprietor _____

Address (number and street, PO Box, or PMB no.) _____

Apt. no./Ste. no. _____

City _____

State _____

ZIP Code _____

 SSN or ITIN CA Corp. no. FEIN

Secretary of State (SOS) file no. _____

Daytime telephone number _____

() _____

Nonresident payee's entity type: (Check one)

 Individual/sole proprietor Corporation Partnership Limited liability company (LLC) Estate or trust**Part III Payment Type**

Nonresident payee: (Check one)

 Performs services totally outside California (no withholding required, skip to Part V) Provides only goods or materials (no withholding required, skip to Part V) Provides goods and services in California (see allocation in Part IV) Provides services within and outside California (see allocation in Part IV) Other (Describe) _____

If the payee performs all the services within California, withholding is required on the entire payment for services unless the payee is granted a withholding waiver from the Franchise Tax Board (FTB). For more information, get FTB Pub. 1017, Resident and Nonresident Withholding Guidelines.

Part IV Income Allocation

Gross payments expected from the above withholding agent during the calendar year for:

	(a) Within California	(b) Outside California	(c) Total payments
1 Goods and services:			
Goods/materials (no withholding required)	_____	_____	_____
Services (withholding required)	_____	_____	_____
2 Rents or lease payments	_____	_____	_____
3 Royalty payments	_____	_____	_____
4 Prizes and other winnings	_____	_____	_____
5 Other payments	_____	_____	_____
6 Total payments subject to withholding.			
Add column (a), line 1 through line 5	_____	_____	_____
Withholding threshold amount:	\$1,500.00		

Withholding is optional, at the discretion of the withholding agent, on the first \$1,500 in payments made during the calendar year. Withholding must begin as soon as the total payments of California source income for the calendar year exceed \$1,500. If the FTB grants the withholding waiver, attach a copy of the FTB determination letter. See General Information E, Waivers.

Part V Certification of Payee

Under penalties of perjury, I certify that the information provided on this document is true and correct. If the reported facts change, I will promptly inform the withholding agent.

Authorized representative's signature _____	Title _____	() _____ Daytime telephone number
Payee's signature _____	Date _____	() _____ Daytime telephone number

Instructions for Form 587

Nonresident Withholding Allocation Worksheet

References in these instructions are to the California Revenue and Taxation Code (R&TC).

General Information

Beginning January 1, 2008, domestic nonresidents may use Form 589, Nonresident Reduced Withholding Request, to request the reduction in the standard seven percent withholding amount that is applicable to California source payments made to nonresidents.

Backup Withholding – Beginning on or after January 1, 2010, with certain limited exceptions, payers that are required to withhold and remit backup withholding to the Internal Revenue Service (IRS) are also required to withhold and remit to the Franchise Tax Board (FTB). The California backup withholding rate is 7% of the payment. For California purposes, dividends, interests, and any financial institutions, release of loan funds made in the normal course of business are exempt from backup withholding.

If a payee has backup withholding, the payee must contact the FTB to provide a valid Taxpayer Identification Number (ITIN) before filing a tax return. The following are acceptable TINs: social security number (SSN); individual taxpayer identification number (ITIN); federal employer identification number (FEIN); California corporation number (CA Corp No.); or California Secretary of State (SOS) file number. Failure to provide a valid TIN will result in the denial of the backup withholding credit. For more information, go to ftb.ca.gov and search for **backup withholding**.

Private Mail Box (PMB) – Include the PMB in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Foreign Address – Enter the information in the following order: City, Country, Province/Region, and Postal Code. Follow the country's practice for entering the postal code. **Do not** abbreviate the country's name.

A Purpose

Use Form 587, Nonresident Withholding Allocation Worksheet, to determine the amount of withholding required on payments to nonresidents.

The payee completes, signs, and returns Form 587 to the withholding agent. The withholding agent relies on the certification made by the payee to

determine the amount of withholding required, provided the completed and signed Form 587 is accepted in good faith. Retain the completed Form 587 for your records for a minimum of four years and provide it to the FTB upon request.

Do not use Form 587 if any of the following applies:

- Payment to a nonresident is only for the purchase of goods.
- You sold California real estate. Use Form 593-C, Real Estate Withholding Certificate.
- The payee is a resident of California or is a non-grantor trust that has at least one California resident trustee. Use Form 590, Withholding Exemption Certificate.
- The payee is a corporation, partnership, or limited liability company (LLC) that has a permanent place of business in California or is qualified to do business in California. Foreign corporations must be qualified to transact intrastate business. Use Form 590.
- The payment is to an estate and the decedent was a California resident. Use Form 590.

B Requirement

California Revenue and Taxation Code (R&TC) Section 18662 and the related regulations require withholding of income or franchise tax on certain payments made to nonresidents of California for personal services performed in California and for rents on property located in California and royalties with activities in California. The withholding rate is seven percent (.07) unless the FTB grants a waiver. See General Information E, Waivers.

C When to File This Form

The withholding agent requests that the payee completes, signs, and returns Form 587 when a contract is entered into or before payment is made to the payee. The withholding agent retains Form 587 for a minimum of four years and must provide it to the FTB upon request.

Form 587 remains valid for the duration of the contract (or term of payments), provided there is no material change in the facts. By signing Form 587, the payee agrees to promptly notify the withholding agent of any changes in the facts.

D Withholding Requirements

Payments made to nonresident payees (including individuals, corporations, partnerships, LLCs, estates, and trusts) are subject to withholding. However, no withholding is required if total payments of California source income to the payee during the calendar year are \$1,500 or less.

If the California resident, qualified corporation, LLC, or partnership is acting as an agent for the nonresident payee, the payment is subject to withholding if the nonresident payee does not meet any of the exceptions on Form 590.

Payments subject to withholding include the following:

- Payments for services performed in California by nonresidents.
- Payments made in connection with a California performance.
- Rent paid to nonresidents if the rent is paid in the course of the withholding agent's business.
- Royalties paid to nonresidents from business activities in California.
- Payments of prizes for contests entered in California.
- Distributions of California source income to nonresident beneficiaries from an estate or trust.
- Other payments of California source income made to nonresidents.

Payments not subject to withholding include payments:

- To a resident of California or to a corporation with a permanent place of business in California.
- To a corporation qualified to do business in California.
- To a partnership or LLC that has a permanent place of business in California.
- For sale of goods.
- For income from intangible personal property, such as interest and dividends, unless the property has acquired a business situs in California.
- For services performed outside of California.
- To a payee that is a tax-exempt organization under either California or federal law, use Form 590.

- Representing wages paid to employees. Wage withholding is administered by the California Employment Development Department (EDD). For more information, contact your local EDD office.
- To a payee that is a government entity.
- To reimburse a payee for expenses relating to services performed in California if the reimbursement is separately accounted for and not subject to federal Form 1099 reporting. Corporate payees, for purposes of this exception, are treated as individual persons.

E Waivers

A nonresident payee may request that withholding be waived. To apply for a withholding waiver, use Form 588, Nonresident Withholding Waiver Request. If the FTB has granted a waiver, you must attach a copy of FTB's determination letter to Form 587.

F Requirement to File a California Tax Return

A payee's exemption certification on Form 587, Form 590, or a determination letter from the FTB waiving withholding does not eliminate the requirement to file a California tax return and pay the tax due. For return filing requirements, see the instructions for Long or Short Form 540NR, California Nonresident or Part-Year Resident Income Tax Return; Form 541, California Fiduciary Income Tax Return; Form 100, California Corporation Franchise or Income Tax Return; or Form 100S, California S Corporation Franchise or Income Tax Return.

Specific Instructions

Part I – Withholding Agent

The withholding agent must complete Part I before giving Form 587 to the payee.

Part II – Nonresident Payee

The payee must complete all information in Part II including the social security number, individual taxpayer identification number, California corporation number, FEIN, or SOS file number, and entity type.

Part III – Payment Type

The nonresident payee must check the box that identifies the type of payment being received.

No withholding is required when payees are residents or have a permanent place of business in California.

Part IV – Income Allocation

Use Part IV to identify payments that are subject to withholding. Only payments sourced within California are subject to withholding. Services performed in California are sourced in California. In the case of payments for services performed when part of the services are performed outside California, enter the amount paid for performing services within California in column (a). Enter the amount paid for performing services while outside California in column (b). Enter the total amount paid for services in column (c).

If the payee's trade, business, or profession carried on in California is an integral part of a unitary business carried on within and outside California, the amounts included on line 1 through line 5 should be computed by applying the payee's California apportionment percentage (determined in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act) to the payment amounts. For more information on apportionment, get California Schedule R, Apportionment and Allocation of Income.

Withholding agent. Withholding is optional, at your discretion, on the first \$1,500 in payments made during the calendar year. Withholding must begin as soon as the total payments of California source income for the calendar year exceed \$1,500. If circumstances change during the year (such as the total amount of payments), which would change the amount on line 6, the payee must submit a new Form 587 to the withholding agent reflecting those changes. The withholding agent should evaluate the need for a new Form 587 when a change in facts occurs.

Part V – Certification of Payee

The payee and/or the authorized representative must complete, sign, date, and return this form to the withholding agent.

Authorized representatives include those persons the payee authorized to act on their behalf through a power of attorney, third party designee, or other individual taxpayers authorized to view their confidential tax data via a waiver or release.

Additional Information

For additional information or to speak to a representative regarding this form, call the Withholding Services and Compliance automated telephone service at:

888.792.4900, or
916.845.4900
FAX 916.845.9512

OR write to:

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

You can download, view, and print California tax forms and publications at ftb.ca.gov.

OR write to:

TAX FORMS REQUEST UNIT MS F284
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

For all other questions unrelated to withholding or to access the TTY/TDD numbers, see the information below.

Internet and Telephone Assistance

Website: ftb.ca.gov
Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States
TTY/TDD: 800.822.6268 for persons with hearing or speech impairments

Asistencia Por Internet y Teléfono

Sitio web: ftb.ca.gov
Teléfono: 800.852.5711 dentro de los Estados Unidos
916.845.6500 fuera de los Estados Unidos
TTY/TDD: 800.822.6268 personas con discapacidades auditivas y del habla

By Automated Phone Service: Use this service to check the status of your refund, order California forms, obtain payment and balance due information, and hear recorded answers to general questions. This service is available 24 hours a day, 7 days a week, in English and Spanish.
Telephone: 800.338.0505 from within the United States
916.845.6600 from outside the United States

Follow the recorded instructions. Have paper and pencil available to take notes.

Withholding Exemption Certificate

2011

(This form can only be used to certify exemption from nonresident withholding under California Revenue and Taxation Code (R&TC) Section 18662. Do not use this form for exemption from wage withholding.)

590

File this form with your withholding agent. (Please type or print)

Withholding agent's name _____

Payee's name _____		Payee's <input type="checkbox"/> SSN or ITIN
		<input type="checkbox"/> SOS file no. <input type="checkbox"/> CA corp. no. <input type="checkbox"/> FEIN
Address (number and street, PO Box, or PMB no.) _____		Apt. no./ Ste. no. _____
City _____	State _____	ZIP Code _____

Read the following carefully and check the box that applies to the payee.

I certify that for the reasons checked below, the payee named on this form is exempt from the California income tax withholding requirement on payment(s) made to the entity or individual.

Individuals — Certification of Residency:

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Who is a Resident, for the definition of a resident.

Corporations:

The above-named corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return and withhold on payments of California source income to nonresidents when required. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information F, What is a Permanent Place of Business, for the definition of permanent place of business.

Partnerships or limited liability companies (LLC):

The above-named partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return and will withhold on foreign and domestic nonresident partners or members when required. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.

Tax-Exempt Entities:

The above-named entity is exempt from tax under California Revenue and Taxation Code (R&TC) Section 23701 _____ (insert letter) or Internal Revenue Code Section 501(c) _____ (insert number). The tax-exempt entity will withhold on payments of California source income to nonresidents when required. If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities.

Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit Sharing Plans:

The above-named entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

California Trusts:

At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required. If the trustee becomes a nonresident at any time, I will promptly notify the withholding agent.

Estates — Certification of Residency of Deceased Person:

I am the executor of the above-named person's estate. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return and will withhold on foreign and domestic nonresident beneficiaries when required.

Nonmilitary Spouse of a Military Servicemember:

I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

CERTIFICATE: Please complete and sign below.

Under penalties of perjury, I hereby certify that the information provided in this document is, to the best of my knowledge, true and correct. If conditions change, I will promptly notify the withholding agent.

Payee's name and title (type or print) _____ Daytime telephone no. _____

Payee's signature ► _____ Date _____

Instructions for Form 590

Withholding Exemption Certificate

References in these instructions are to the California Revenue and Taxation Code (R&TC).

What's New

Backup Withholding – Beginning on or after January 1, 2010, with certain limited exceptions, payers that are required to withhold and remit backup withholding to the Internal Revenue Service (IRS) are also required to withhold and remit to the Franchise Tax Board (FTB). The California backup withholding rate is 7% of the payment. For California purposes, dividends, interests, and any financial institutions release of loan funds made in the normal course of business are exempt from backup withholding. For additional information on California backup withholding, go to ftb.ca.gov and search for **backup withholding**.

If a payee has backup withholding, the payee must contact the FTB to provide a valid Taxpayer Identification Number (TIN) before filing a tax return. The following are acceptable TINs: social security number (SSN); individual taxpayer identification number (ITIN); federal employer identification number (FEIN); California corporation number (CA Corp No.); or Secretary of State (SOS) file number. Failure to provide a valid TIN will result in the denial of the backup withholding credit. For more information go to ftb.ca.gov and search for **backup withholding**.

General Information

For purposes of California income tax, references to a spouse, husband, or wife also refer to a Registered Domestic Partner (RDP) unless otherwise specified. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

Private Mail Box (PMB) – Include the PMB in the address field. Write "PMB" first, then the box number. Example: 111 Main Street PMB 123.

Foreign Address – Enter the information in the following order: City, Country, Province/Region, and Postal Code. Follow the country's practice for entering the postal code. **Do not** abbreviate the country's name.

A Purpose

Use Form 590, Withholding Exemption Certificate, to certify an exemption from nonresident withholding. California residents or entities should complete and present Form 590 to the withholding agent. The withholding agent is then relieved of the withholding requirements if the agent relies in good faith on a completed and signed Form 590 unless told by the FTB that the form should not be relied upon.

The following are excluded from withholding and completing this form:

- The United States and any of its agencies or instrumentalities

- A state, a possession of the United States, the District of Columbia, or any of its political subdivisions or instrumentalities
- A foreign government or any of its political subdivisions, agencies, or instrumentalities

Important – This form cannot be used for exemption from wage and real estate withholding.

- If you are an employee, any wage withholding questions should be directed to the FTB General Information number, 800.852.5711. Employers should call 888.745.3886 or go to www.edd.ca.gov.
- Sellers of California real estate use Form 593-C, Real Estate Withholding Certificate, to claim an exemption from real estate withholding.

B Requirement

R&TC Section 18662 requires withholding of income or franchise tax on payments of California source income made to nonresidents of California.

Withholding is required on the following, but is not limited to:

- Payments to nonresidents for services rendered in California.
- Distributions of California source income made to domestic nonresident S corporation shareholders, partners and members and allocations of California source income made to foreign partners and members.
- Payments to nonresidents for rents if the payments are made in the course of the withholding agent's business.
- Payments to nonresidents for royalties with activities in California.
- Distributions of California source income to nonresident beneficiaries from an estate or trust.
- Prizes and winnings received by nonresidents for contests in California.

However, withholding is optional if the total payments of California source income are \$1,500 or less during the calendar year.

For more information on withholding get FTB Pub. 1017, Resident and Nonresident Withholding Guidelines. To get a withholding publication see General Information H, Publications, Forms, and Additional Information.

C Who Certifies this Form

Form 590 is certified by the payee. An incomplete certificate is invalid and the withholding agent should not accept it. If the withholding agent receives an incomplete certificate, the withholding agent is required to withhold tax on payments made to the payee

until a valid certificate is received. In lieu of a completed certificate on the preprinted form, the withholding agent may accept as a substitute certificate a letter from the payee explaining why the payee is not subject to withholding. The letter must contain all the information required on the certificate in similar language, including the under penalty of perjury statement and the payee's taxpayer identification number. The withholding agent must retain a copy of the certificate or substitute for at least four years after the last payment to which the certificate applies, and provide it upon request to the Franchise Tax Board.

For example, if an entertainer (or the entertainer's business entity) is paid for a performance, the entertainer's information must be provided. **Do not** submit the entertainer's agent or promoter information.

The grantor of a grantor trust shall be treated as the payee for withholding purposes.

Therefore, if the payee is a grantor trust and one or more of the grantors is a nonresident, withholding is required. If all of the grantors on the trust are residents, no withholding is required. Resident grantors can check the box on Form 590 labeled "Individuals — Certification of Residency."

D Who is a Resident

A California resident is any individual who is in California for other than a temporary or transitory purpose or any individual domiciled in California who is absent for a temporary or transitory purpose.

An individual domiciled in California who is absent from California for an uninterrupted period of at least 546 consecutive days under an employment-related contract is considered outside California for other than a temporary or transitory purpose.

An individual is still considered outside California for other than a temporary or transitory purpose if return visits to California do not total more than 45 days during any taxable year covered by an employment contract.

This provision does not apply if an individual has income from stocks, bonds, notes, or other intangible personal property in excess of \$200,000 in any taxable year in which the employment-related contract is in effect.

A spouse/RDP absent from California for an uninterrupted period of at least 546 days to accompany a spouse/RDP under an employment-related contract is considered outside of California for other than a temporary or transitory purpose.

Generally, an individual who comes to California for a purpose which will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For assistance in determining resident status, get FTB Pub. 1031, Guidelines for Determining Resident Status, and FTB Pub. 1032, Tax Information for Military Personnel, or call the FTB at 800.852.5711 or 916.845.6500.

E Military Spouse Residency Relief Act (MSRRA)

Generally, for tax purposes you are considered to maintain your existing residence or domicile. If a military servicemember and nonmilitary spouse have the same state of domicile, the MSRRA provides:

- A spouse shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent to be with the servicemember serving in compliance with military orders.
- A spouse shall not be deemed to have acquired a residence or domicile in any other state solely by reason of being there to be with the servicemember serving in compliance with military orders.

Domicile is defined as the one place:

- Where you maintain a true, fixed, and permanent home
- To which you intend to return whenever you are absent

A military servicemember's nonmilitary spouse is considered a nonresident for tax purposes if the servicemember and spouse have the same domicile outside of California and the spouse is in California solely to be with the servicemember who is serving in compliance with Permanent Change of Station orders (Note: California may require nonmilitary spouses of military servicemembers to provide proof that they meet the criteria for California personal income tax exemption as set forth in the MSRRA).

Income of a military servicemember's nonmilitary spouse for services performed in California is not California source income subject to state tax if the spouse is in California to be with the servicemember serving in compliance with military orders, and the servicemember and spouse have the same domicile in a state other than California.

For additional information or assistance in determining whether the applicant meets the MSRRA requirements, get FTB Pub. 1032.

F What is a Permanent Place of Business

A corporation has a permanent place of business in California if it is organized and existing under the laws of California or if it is a foreign corporation qualified to transact intrastate business by the SOS. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in California only if it maintains a permanent office in California that is permanently staffed by its employees.

G Withholding Agent

Keep Form 590 for your records. **Do not** send this form to the FTB unless it has been specifically requested.

For more information, contact Withholding Services and Compliance, see General Information H.

The payee must notify the withholding agent if any of the following situations occur:

- The individual payee becomes a nonresident.
- The corporation ceases to have a permanent place of business in California or ceases to be qualified to do business in California.
- The partnership ceases to have a permanent place of business in California.
- The LLC ceases to have a permanent place of business in California.
- The tax-exempt entity loses its tax-exempt status.

The withholding agent must then withhold and report the withholding using Form 592, Resident and Nonresident Withholding Statement, and remit the withholding using Form 592-V, Payment Voucher for Resident and Nonresident Withholding. Form 592-B, Resident and Nonresident Withholding Tax Statement, is retained by the withholding agent and a copy is given to the payee.

H Publications, Forms, and Additional Information

You can download, view, and print California tax forms and publications at ftb.ca.gov.

To have publications or forms mailed to you or to get additional nonresident withholding information, contact the Withholding Services and Compliance.

WITHHOLDING SERVICES AND
COMPLIANCE MS F182
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Telephone: 888.792.4900
916.845.4900

Fax: 916.845.9512

For all other questions unrelated to withholding or to access the TTY/TDD numbers, see the information below.

Internet and Telephone Assistance

Website: ftb.ca.gov
Telephone: 800.852.5711 from within the
United States
916.845.6500 from outside the
United States
TTY/TDD: 800.822.6268 for persons with
hearing or speech impairments

Asistencia Por Internet y Teléfono

Sitio web: ftb.ca.gov
Teléfono: 800.852.5711 dentro de los
Estados Unidos
916.845.6500 fuera de los Estados
Unidos
TTY/TDD: 800.822.6268 personas con
discapacidades auditivas
y del habla