



City of Sacramento City Council

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

Meeting Date: 10/23/2012

Report Type: Consent

Title: Agreement: Lower American River Flow Management Standard Environmental Impact Report (EIR)

Report ID: 2012-00814

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager, or his designee, to execute a Professional Services Agreement with Ascent Environmental, Inc. to provide environmental planning and compliance efforts necessary to prepare an Environmental Impact Report for an amount not to exceed \$264,000.

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

Presenter: None

Department: Community Support

Division: CCOMWP

Dept ID: 80004101

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Contract

City Attorney Review

Approved as to Form
Joe Robinson
10/17/2012 9:47:15 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
10/10/2012 1:13:13 PM

Approvals/Acknowledgements

Department Director or Designee: Tom Gohring - 10/15/2012 5:26:03 PM



Description/Analysis

Issue: This report identifies the need for professional services for the City County Office of Metropolitan Water Planning (CCOMWP), which staffs and manages the Water Forum Successor Effort (WFSE). The lower American River (LAR) Flow Management Standard (FMS) Update Project is an essential element of the Water Forum Agreement (WFA). The proposed agreement with Ascent Environmental, Inc. is for technical services necessary to develop the Environmental Impact Report (EIR) for the WFSE's proposal to update the LAR FMS.

Policy Considerations: This report is submitted in compliance with the policy direction provided by the Sacramento City Council and Sacramento County Board of Supervisors in forming the CCOMWP, approving its work plan, and supporting the efforts of the Water Forum (City Agreement 2001-005).

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA):

Approval of this agreement will allow the environmental review required for the proposed Lower American River Flow Management Standard to be performed.

Sustainability Considerations: Approval of this agreement is consistent with the City of Sacramento's Sustainability Master Plan Goals. Pursuit of a Flow Management Standard for the lower American River that is more protective of fisheries and aquatic resources is a fundamental element of the Water Forum Agreement, which is supported by the City's Sustainability Goal No. 7 - Parks, Open Space and Habitat Conservation.

Commission/Committee Action: None

Rationale for Recommendation: Funding for the Flow Management Standard Environmental Impact Report was approved with adoption of the Fiscal Year (FY) 2012/13 CCOMWP budget. Approval of this agreement is consistent with the approved budget. In 2009 CCOMWP staff developed a scope of work for the professional services needed for development of the EIR for the LAR FMS and solicited Qualifications Statements from consulting firms (Q093351028). A selection committee reviewed the qualifications received and selected HDR|Surface Water Resources, Inc. as the top ranked firm to lead the project and prepare the EIR. Ascent Environmental, Inc. was included as a part of that project team.

Financial Considerations: This contract has no impact on the City's General Fund. There are sufficient resources for the proposed agreement in the amount of \$264,000 in Fund 7103 for the Water Forum Successor Effort (WFSE) and Fund 7104 for the

Habitat Management Element (HME). The WFSE and HME are funded by a cost-share agreement among the City of Sacramento, County of Sacramento, and other cost - share partners including the City of Roseville, City of Folsom, Placer County Water Agency, Sacramento Municipal Water District, San Juan Water District (Placer County Service Area), and the El Dorado County Water Agency.

Emerging Small Business Development (ESBD): Ascent Environmental, Inc. is certified as a SBE.



Background Information:

- The City and County of Sacramento created the City-County Office of Metropolitan Water Planning (CCOMWP) in 1991 to pursue a joint water planning effort in the greater Sacramento Metropolitan area.
- In 1993, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments formed the Sacramento Area Water Forum.
- In 1999, Water Forum members approved a comprehensive Water Forum Agreement (WFA) (City Agreement No. 1999-222). The WFA consists of integrated actions necessary for providing a regional solution to water shortages, environmental damage, groundwater contamination, and limited economic prosperity.
- The CCOMWP has been charged with staffing the effort to implement the WFA, known as the Water Forum Successor Effort (WFSE).
- A revised flow standard that is more protective of the aquatic resources of the lower American River (LAR) is one of the WFA's seven elements and critical to meeting its co-equal objectives. These activities may include submittal of a petition to the State Water Resources Control Board by the U.S. Bureau of Reclamation, to add conditions to Reclamation's Folsom Reservoir water right permits that provide for flow releases to the LAR in accordance with the proposed LAR Flow Management Standard. In FY2012/13 the CCOMWP, on behalf of the WFSE, will work on environmental documentation, including defining the scope of work and developing a project description and project alternatives for the Environmental Impact Report (EIR).
- Ascent Environmental, Inc. has conducted previous technical analysis related to this project and will team with the lead consulting firm, HDR|Surface Water Resources, Inc., to provide specific unique modeling and analysis required for the EIR.



PROJECT NAME: Lower American River Flow Management Standard EIR
 DEPARTMENT: Citywide & Community Support
 DIVISION: City-County Office of Metropolitan Water Planning

**CITY OF SACRAMENTO
 PROFESSIONAL SERVICES AGREEMENT ***

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

Ascent Environmental, Inc.
 455 Capitol Mall, Suite 205, Sacramento, CA 95814
 Telephone 916-444-7301

(“CONTRACTOR”), who agree as follows:

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

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

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

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

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

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

CONTRACTOR:

Ascent Environmental, Inc. _____

NAME OF FIRM

27-1537109 _____

Federal I.D. No.

3264507 _____

State I.D. No.

1002863 _____

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

Individual/Sole Proprietor

Partnership

Corporation (*may require 2 signatures*)

Limited Liability Company

Other (*please specify: _____*)

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Ascent Environmental, Inc.

Address: 455 Capitol Mall, Suite 205, Sacramento, CA 95814

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

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

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

- c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing

such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

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

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

Signature of Authorized Representative

Date

Print Name

Title

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

1. Representatives.

The CITY Representative for this Agreement is:

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

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:

Curtis E. Alling, AICP, Principal
Ascent Environmental, Inc.
455 Capitol Mall, Suite 205, Sacramento, CA 95814
Telephone 916-444-7301
curtis.alling@ascentenvironmental.com

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

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

3. Conflict of Interest Requirements.

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

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

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

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

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

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

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

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

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

4. **Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
5. **Time of Performance.** The services described herein shall be provided during the period beginning October 23, 2012 and ending June 30, 2014.



**Lower American River Flow Management Standard
Environmental Impact Report
Scope of Services**

Ascent Environmental, Inc.

Introduction

This scope of services identifies environmental services that Ascent Environmental, Inc. (Ascent) will provide to the Water Forum and County of Sacramento for the *Lower American River Flow Management Standard (FMS) Environmental Impact Report (EIR)*.

The Water Forum is proposing the Lower American River FMS on behalf of its stakeholders. The County of Sacramento will be the CEQA lead agency for EIR preparation. Other consultants to the Water Forum will provide input to the EIR, including HDR, Inc. (hydrology and water supply, fisheries and aquatic resources, hydropower, and flood control), Robertson-Bryan, Inc. (water quality), and cbec (hydrologic modeling).

The Sacramento Area Water Forum Agreement EIR, completed in 1999, was a Program EIR, prepared in accordance with Section 15168 of the State CEQA Guidelines. To the extent that environmental information from that EIR is suitable as substantial evidence to support the currently proposed FMS, the information will be used or incorporated by reference, as appropriate. The FMS EIR will follow the same format and table of contents as the 1999 EIR to the extent feasible.

The tasks described in this scope of services cover the environmental planning and compliance efforts necessary to prepare an EIR in accordance with the requirements of the California Environmental Quality Act (CEQA) and State CEQA Guidelines. Preparation of an environmental document in compliance with the National Environmental Policy Act (NEPA), a separate Public Trust Analysis document, and permit application materials are not included as part of the scope of services, but can be added, if needed, by a contract amendment.

Task 1. Project Initiation, Data Review, Kick-off Meeting

It is assumed that the Water Forum will provide Ascent with all available studies, surveys, and other documentation (in MS Word and pdf format) related to the Lower American River Flow Management Standard (project), including modeling output, analysis data, maps, and graphics. Ascent will review these data and information and will prepare a project information memo for the Water Forum regarding input needed from the Water Forum and its consultants for preparation of the EIR.

Ascent will attend a project kick-off meeting attended by the Water Forum, County of Sacramento, and key Water Forum consultants to discuss the project history and background, identify/confirm project objectives, discuss areas of controversy and potential strategies, and establish communication/review protocols. The project schedule will also be discussed. It is requested that the Water Forum and County of Sacramento

provide any guidance and/or policy information regarding EIR outline, format, content, etc. to Ascent at the kick-off meeting (or shortly thereafter).

Deliverables:

- ▲ Project information memo (electronic).
- ▲ Written kick-off meeting summary (electronic).

Meetings:

- ▲ Attendance at one (1) project kickoff meeting.

Task 2. Notice of Preparation and Scoping Meeting

Ascent will prepare the Notice of Preparation (NOP) for the project in coordination with the County of Sacramento. It will include a brief project description, project location, and list of probable environmental effects, but will not include analysis in the form of an Initial Study. A map depicting the Lower American River project area will be included. It is assumed that a general narrative description of the project is readily available for adaptation into the NOP. The NOP will also announce the date, time, and place of a scoping meeting.

Ascent will prepare a draft and a final NOP. The draft will be submitted to the Water Forum and County of Sacramento for review, comment, and approval to release. It is assumed that the County of Sacramento will send the NOP to the State Clearinghouse, responsible agencies, trustee agencies, and others expressing interest in receiving it, as well as prepare a newspaper notice from the NOP and coordinate with the local newspaper(s) to publish the public notice.

Ascent will assist the Water Forum and County of Sacramento with the scheduling, organizing, and carrying out a scoping meeting (which is required, because the project qualifies as having statewide, regional, or areawide significance, in accordance with State CEQA Guidelines sections 15082[c] and 15206). The Water Forum or County of Sacramento will arrange the scoping meeting location. Ascent will attend and, if requested, make presentations at and facilitate the scoping meeting for the project. Ascent will be responsible for documenting comments received and for preparing a written summary of the environmental comments to be placed in an appendix of the EIR.

Deliverables:

- ▲ One (1) electronic copy of the Draft NOP.
- ▲ Twenty-five (25) printed copies of the Final NOP; one web-friendly format of the NOP (pdf); and one original format electronic copy (MS Word) submitted to the County of Sacramento.
- ▲ Fifteen (15) additional printed copies of the NOP for the State Clearinghouse.
- ▲ Written summary of environmental comments from scoping meeting (incorporated into the appendix of the EIR).

Meetings:

- ▲ Attendance at one (1) scoping meeting.

Task 3. Project and Alternatives Description

The Water Forum and HDR have been developing potential FMS scenarios for consideration by the Water Forum stakeholders and evaluation in the EIR. This work will form the basis of the CEQA project description and alternatives analysis. Ascent will coordinate with Water Forum and HDR staff and prepare a description the preferred FMS scenario and alternative scenarios for inclusion in the EIR. Ascent anticipates iterative discussions with Water Forum and HDR staff regarding project details, including the operational aspects of the Central Valley Project or State Water Project that are outcomes of the FMS scenarios, or other modeling or operational details for the Lower American River. Based on the information provided by the Water Forum and HDR, Ascent will prepare the draft description of the project and alternatives for use in the EIR.

The EIR will describe the objectives of the Lower American River FMS and show the Water Forum formulated the preferred FMS scenario and a reasonable range of alternatives that would achieve the project objectives. The alternatives analysis will describe the alternatives screening process conducted for the project, including the alternatives considered but eliminated from further evaluation, and the alternatives selected for more detailed analysis of water supply and fisheries impacts in the EIR.

Up to four alternatives to the preferred FMS scenario, including No-Project Alternative and three alternative FMS scenarios, will be evaluated in the EIR. The alternatives will be evaluated in accordance with CEQA requirements, which allow for reduced level of detail. For water supply and fisheries effects, however, the alternative FMS scenarios carried into the EIR will be evaluated at an equal level of detail. Ascent will prepare the description of the alternatives, including operations, based upon information provided by the Water Forum and HDR defining the alternatives both in terms of their concept and purpose, as well as their specific operational parameters.

Ascent will prepare one draft version of the Description of the Project and Alternatives for review and comment by the Water Forum, County of Sacramento, and HDR. Revisions in response to comments will be incorporated into the version of the Description of the Project and Alternatives to be included in the Administrative Draft EIR.

Deliverables:

- ▲ One (1) electronic copy of the Draft Description of the Project and Alternatives.

Task 4. Administrative Draft EIR

Ascent will prepare the Administrative Draft EIR to meet the content requirements of CEQA and the CEQA guidelines. A draft EIR outline will be discussed with and submitted for approval by the Water Forum and County of Sacramento prior to the Administrative Draft EIR submittal. The EIR outline will follow the 1999 Water Forum Agreement EIR format as closely as feasible. For the purposes of this scope of services, however, the following EIR outline is presented below with brief notes about the content of each chapter/section. Ascent anticipates discussion and modification of this outline with the County of Sacramento to ensure it meets the needs of the lead agency.

- ▲ **Title Sheet**, identifies the title and location of the project; contact information for the lead agency; and the dates for the public comment period.
- ▲ **Table of Contents**
- ▲ **Executive Summary** summarizes the project and alternatives, the major conclusions of the environmental analysis, any areas of controversy, and issues to be resolved. The section concludes with

a summary table that lists the environmental impacts, mitigation measures, and significance conclusions for the project and alternatives.

- ▲ **Introduction and Project Objectives** explains the CEQA process, identifies the lead agencies, presents the project's objectives, lists the required permits and approvals, outlines the organization of the EIR, and provides information on public involvement.
- ▲ **Project and Alternatives Description** constitutes the project description, and describes the proposed project and the alternatives considered in the EIR. This chapter also describes alternatives considered but eliminated from further evaluation.
- ▲ **Existing Setting, Environmental Impacts, and Mitigation Measures** provides a description of the existing environmental and regulatory conditions (baseline), an analysis of impacts at an equal level of detail for the project and alternatives, and identifies mitigation measures that would avoid or eliminate significant impacts or reduce them to a less-than-significant level, where feasible. This chapter, like the Affected Environment, above, is organized by environmental resource (see list above); each section will contain the following subsections:
 - /// *Environmental Topic Sections* will mirror the 1999 Water Forum EIR to the extent feasible, except where different conditions warrant a change (i.e., for climate change/greenhouse gases). The following topical sections will be included. The firm with primary responsibility for conducting the section is noted in parentheses:
 - Groundwater Resources (HDR)
 - Water Supply (HDR)
 - Water Quality (Robertson Bryan)
 - Fisheries Resources and Aquatic Habitat (HDR)
 - Flood Control (HDR)
 - Power Supply (HDR)
 - Vegetation and Wildlife (Ascent)
 - Recreation (Ascent)
 - Land Use and Growth Inducing Impacts (Ascent)
 - Aesthetics (Ascent)
 - Cultural Resources (Ascent subconsultant)
 - Soils and Geology (Ascent)
 - Climate Change/Greenhouse Gases (Ascent)
 - /// *Existing Setting* descriptions will draw from existing environmental documents, planning documents, prior Water Forum studies, environmental resource literature, existing GIS mapping, and agency consultation input. Because of the regional nature of the analysis, new field studies and data gathering are assumed to not be needed for this scope of services. The description will include the environmental setting at the time of the NOP (normally the baseline under the State CEQA Guidelines) and regulatory setting, summarizing state and federal laws and regulations that affect the project.
 - /// *Methodology* describes the methods, process, procedures, and/or assumptions used to formulate and conduct the impact analysis.
 - /// *Thresholds of Significance* presents the significance criteria (or "thresholds of significance") used to define the level at which an impact would be considered significant in accordance with CEQA. Generally, the thresholds of significance are derived from Appendix G of the State CEQA

Guidelines, as amended; factual or scientific information and data; and regulatory standards of federal, state, and local agencies.

- *Environmental Impacts and Mitigation Measures* discussion presents the impact analyses for the project and alternatives consistent with the methodology and applies the thresholds of significance to the assessment findings for the purposes of making impact determinations. Mitigation measures are defined that, upon implementation, would avoid, reduce to less-than-significant levels, or minimize significant or potentially significant impacts.
- **Cumulative Impacts** contains an analysis of the project's contribution to future cumulative impacts resulting from the implementation of this project along with other past, present, and probable (i.e., reasonably foreseeable) future projects, as required by CEQA. Other EIRs addressing cumulative development in the region will be used as sources of information for the cumulative impact analysis.
- **Summary of Public Trust Issues** will discuss the Public Trust Doctrine and the potential public trust issues presented by the project, based on analysis conducted for other technical sections (e.g., fisheries, water supply, recreation). A separate Public Trust Analysis document is assumed to not be needed.
- **Other CEQA-Required Sections** includes the following subsections required by CEQA: relationship between short-term uses of the environment and long-term productivity, significant and unavoidable environmental impacts, and irreversible and irretrievable commitment of resources.
- **Compliance with State and Federal Laws** will summarize how the project is consistent with other state and federal mandates regarding water management for the American River.
- **Consultation and Coordination** summarizes public review activities, including coordination with other federal, state, regional, and local agencies.
- **References**
- **List of Preparers**
- **Appendices** contain background information that supports the EIR.

The Administrative Draft EIR will be submitted to the Water Forum and County of Sacramento for review and comment.

Deliverables:

- Six (6) printed copies and 1 electronic copy of the Administrative Draft EIR (appendices to be provided electronically only).

Task 5. Screencheck Draft EIR

Ascent will revise the Administrative Draft EIR and prepare the Screencheck Draft EIR in accordance with review comments from the Water Forum and County of Sacramento. For the purposes of this scope and budget, Ascent will address one round of review comments to produce the Screencheck Draft EIR from the Administrative Draft EIR.

Deliverables:

- Six (6) printed copies and 1 electronic copy of the Screencheck Draft EIR (appendices to be provided electronically only).

Task 6. Public Draft EIR and Notice of Availability

Following receipt of comments from the Water Forum and County of Sacramento on and approval of the Screencheck Draft EIR for release to the public, Ascent will prepare the Public Draft EIR.

The County of Sacramento will be responsible for distribution of the Public Draft EIR.

Ascent will prepare the Notice of Availability (NOA) for the County of Sacramento to send to the project mailing list (assumes 50 copies), including the county clerk's office, and will prepare and deliver the Notice of Completion (NOC) to the State Clearinghouse. It is assumed that the County of Sacramento will publish the NOA in the newspaper, as needed.

Deliverables:

- ▲ One (1) printed proof copy of the Public Draft EIR (with appendices); an electronic file for use in printing paper copies; one web-friendly format of the entire Draft EIR for posting; one original format electronic copy (MS Word).
- ▲ (Ascent will coordinate the printing of Public Draft EIR paper copies for distribution by the County. The vendor's charge for printing will either be passed to the Water Forum at cost without any additional Ascent mark-up or invoiced directly from the vendor. As such, the cost of printing the Public Draft EIR is not included in the attached contract price estimate).

Task 7. Public Meeting on the Draft EIR

Ascent will attend and, if requested, present at one public meeting on the Draft EIR. Ascent will be available to describe the conclusions presented in the Draft EIR and respond to any questions on the Draft EIR analysis. Ascent will note oral environmental comments at the public meeting that are important for response during preparation of the Final EIR. If the Water Forum or County of Sacramento desires to record verbatim comments, a court reporter would be needed. The contract price estimate assumes that the court reporter would be provided by the County of Sacramento and is, therefore, not included.

Meetings:

- ▲ Attendance at one (1) public meeting on the Draft EIR.

Task 8. Briefings for Sacramento Water Forum Stakeholders

Ascent will provide up to three (3) briefings to Water Forum stakeholders at stakeholder meetings. These briefings are important to keep the stakeholders updated on the environmental analysis and documentation and are intended to help the stakeholders understand the environmental analysis and reduce the number of comments on the Draft EIR from the stakeholder member. For the purposes of this scope and budget, the three meetings will be at the beginning of the EIR preparation, prior to the completion of the Draft EIR to review tentative conclusions, and during the Draft EIR circulation period. Hours budgeted assume three 3-hour briefings by two Ascent staff.

Task 9. Response to Comments, Administrative Final EIR, and Mitigation Monitoring and Reporting Program

The County of Sacramento will be responsible for receiving all public comments on the Draft EIR and providing the comment letters to Ascent as they are received. Ascent will attend a meeting with the Water

Forum and County of Sacramento to review the public comments and discuss strategies for responding to those comments.

Ascent will prepare an Administrative Final EIR that will consist of an introductory chapter; summary of text revisions to Draft EIR in a section of the document; a list of persons, organizations, and public agencies commenting on the Draft EIR; enumerated comment letters and public hearing comments; responses to the significant environmental points raised in comments received on the Draft EIR. A complete revision (red-line and strike-out) and reprint of the Draft EIR is assumed not to be needed.

Ascent will prepare one Draft and one Final Mitigation Monitoring and Reporting Program (MMRP).

Deliverables:

- ▲ Six (6) printed copies and one (1) electronic copy of the Administrative Final EIR (appendices to be provided electronically only).
- ▲ One (1) electronic copy of the Draft MMRP and one (1) electronic copy of the Final MMRP.

Meetings:

- ▲ Attendance at one (1) response to comments strategy meeting (cost included in **Task 12**).

Task 10. Screencheck Final EIR

Ascent will revise the Administrative Final EIR and prepare the Screencheck Final EIR in accordance with review comments from the Water Forum and County of Sacramento. For the purposes of this scope and budget, Ascent will address one round of review comments to produce the Screencheck Final EIR from the Administrative Final EIR.

Deliverables:

- ▲ Six (6) printed copies and (1) electronic copy of the Screencheck Final EIR (appendices to be provided electronically only).

Task 11. Public Final EIR

Following receipt of comments from the Water Forum and County of Sacramento on and approval of the Screencheck Final EIR, Ascent will prepare the Public Final EIR.

Following project approval and EIR certification, the County of Sacramento will prepare and submit the Notice of Determination (NOD) to the county clerk and State Clearinghouse.

Deliverables:

- ▲ One (1) printed proof copy of the Public Final EIR (with appendices); an electronic file for use in printing paper copies; one web-friendly format of the entire Final EIR for posting; one original format electronic copy (MS Word).
- ▲ (Ascent will coordinate the printing of Public Final EIR paper copies for distribution by the County. The vendor's charge for printing will either be passed to the Water Forum at cost without any additional Ascent mark-up or invoiced directly from the vendor. As such, the cost of printing the Public Final EIR is not included in the attached contract price estimate).

Task 12. Contribution to the Administrative Record

Ascent will maintain electronic copies of reference documents or portions of documents cited in the Draft and Final EIR, and will make the electronic files available during the public review periods for both the Draft and Final EIR.

Upon completion of the environmental process (assumed to be filing of the NOD), Ascent will provide YCWA with an electronic copy of the documents referenced in the EIR as a contribution to the Administrative Record for the project.

Deliverables:

- ▲ One (1) CD containing all documents cited in the Draft and Final EIR (upon issuance of the Public Draft and Final EIS/EIR).
- ▲ One (1) CD containing the complete set of documents referenced in the EIR (upon completion of the environmental process).

Task 13. Project Management, Coordination, Water Forum/County of Sacramento Meetings, Involved Agency Meetings

Ascent's project management team will engage in the following regular activities to ensure the project is on task, schedule, and budget:

- ▲ Internal kickoff meeting: The internal meeting will be targeted toward providing clear direction to all Ascent project staff, including formats, resources, and approaches. We will also provide budget and schedule direction.
- ▲ Regularly scheduled project status phone calls: Calls will be scheduled on a recurring basis that is convenient for and agreed upon by the Water Forum and County of Sacramento, and is appropriate for the project. Up to a total of twelve (12) one-hour calls are assumed.
- ▲ Meetings: Conduct and/or participate in periodic meetings to discuss and solve key issues, approaches, and challenges with the Water Forum and County of Sacramento and other involved agencies. Six (6) coordination meetings are assumed in the budget. A meeting list is provided below.
- ▲ Unscheduled phone calls and e-mails: Informational e-mails will be sent as appropriate. We will use the phone, frequently, as the primary communication device especially as it relates to strategic issues.
- ▲ Compliance with scope of services: Provide project management liaison between Ascent, Water Forum, Water Forum consultants, and County of Sacramento for communication of issues, transmittal of comments, contract and financial management, and other coordination matters.
- ▲ Schedule compliance checks: Maintain a schedule checklist that includes milestones such as receipt of external (e.g., project description information, technical reports, etc.) and internal material. Reminders will be provided as needed to keep the project on schedule.
- ▲ Budget management: Conduct weekly and monthly internal budget checks to make sure the project expenditures are occurring at a pace that reflects the work project status.
- ▲ Quality assurance/quality control: Conduct quality control reviews of all deliverables.
- ▲ File management and coordination: Maintain overall administrative file management and coordination.

Ascent will maintain close communication with the Water Forum and County of Sacramento with the intent that objectives are met, the schedule is maintained, and the project is implemented within established

budget parameters. Ascent will prepare monthly written progress reports regarding the project schedule, status of deliverables, information needs, and status of the contract to accompany project invoices.

Ascent will attend meetings as listed below.

Deliverables:

- ▲ Meeting agendas, and summary meeting notes and action items.

Meetings:

- ▲ Four (4) coordination meetings with the Water Forum and County of Sacramento.
- ▲ Two (2) coordination meetings with other involved agencies.

Budget Assumptions

The following assumptions underlying the budget for the Lower American River FMS EIR are presented in the interest of clarity regarding the scope of services and attendant costs.

- ▲ **Meetings:** Costs are included for the number of meetings specified in the scope of services, consisting of: one kickoff meetings, six coordination meetings, one scoping meeting, one public meeting on the Draft EIR, and one Response to Comments strategy meeting. If additional meetings are needed, they can be included with an amendment of the budget.
- ▲ **Document Review Cycles:** Reviews of the preliminary versions of the Draft EIR and Final EIR are assumed to consist of two review cycles each (i.e., administrative draft document and screencheck document) prior to publishing the public version. Additional review cycles or additional versions of preliminary drafts are assumed to not be needed, and are not included in the cost estimate. Ascent will diligently consider and address all internal comments.
- ▲ **Publication of Notices:** The County of Sacramento will be responsible for publishing notices in the newspaper. Publication costs are, therefore, not included in the budget.
- ▲ **Schedule:** A schedule will be developed in coordination with the Water Forum and County of Sacramento during the first task. The EIR is currently anticipated to be completed by the end of 2013.
- ▲ **CEQA Document:** This product will be an EIR prepared in compliance with CEQA. It includes a summary of public trust issues, based on other environmental analysis sections. An environmental document prepared in compliance with NEPA, a separate Public Trust Analysis, and permitting applications are not included as part of the scope at this time.
- ▲ **CEQA Findings of Fact and Statement of Overriding Considerations:** County of Sacramento Counsel staff is expected to prepare CEQA Findings and Statement of Overriding Considerations to be used for project approval.
- ▲ **Response to Public Comments:** The nature and number of public and agency comments on a Draft EIR is not predictable. The proposed budget includes a reasonable, preliminary estimate of time to respond to comments. The responses are assumed to involve reference to and clarification and explanation of existing analysis findings in the Draft EIR. If as a result of public or agency comments, (1) additional data gathering, modeling, analysis, issues, or alternatives are required for responses or (2) comments indicate legal opposition or potential for litigation (e.g., an opposition letter prepared by an attorney), Ascent will discuss the strategies for responses with the Water Forum and County of Sacramento, because a budget amendment may be necessary.
- ▲ **Final EIR:** It is assumed that the Final EIR will consist of a separate volume with an introductory section, list of commenting persons and agencies, written responses to comments, and a chapter with excerpted Draft EIR text changes (in tracked changes). If the Final EIR is required to include a reprint of the entire Draft EIR, with changes or corrections incorporated based on public comments, an amendment to the budget may be necessary.
- ▲ **California Department of Fish and Game (CDFG) Filing Fee:** The Water Forum or County of Sacramento will pay the CDFG fee at the time the NOD is filed.
- ▲ **Litigation Support.** If the environmental document is challenged in court, the proposed scope of services does not include labor or other costs after the filing of a lawsuit. Ascent team is available to assist in the lead agency's response to a lawsuit, subject to an amendment to the contract and budget.
- ▲ **Cost Allocation to Tasks:** Ascent has allocated costs to tasks to determine the total budget. Ascent may reallocate labor or direct costs to other tasks, as needed during the course of the work, as long as the total budget is not exceeded.
- ▲ **Work Suspension:** The budget is based on completion of work within a reasonable schedule and with continuous work efforts. If work is suspended by the Water Forum or County of Sacramento for 90 days

or more, invoices for all work completed to the date of suspension is payable to Ascent, and an amendment of the budget may be needed to cover additional project management time and other costs associated with restarting the project. Additional fees would only be requested if needed to cover true additional costs.

- ▲ **Printing of Public Documents:** Ascent will coordinate the printing of Public Draft EIR and Public Final EIR paper copies for distribution by the County. The vendor's charge for printing will be passed to the Water Forum at cost without any additional Ascent mark-up. Alternatively, the vendor charges could be invoiced directly to the Water Forum. As such, the cost of printing the public documents is not included in the price estimate.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$264,000 (Two-Hundred, Sixty-Four Thousand dollars and No Cents) .
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

Tom Gohring, Executive Director

City-County Office of Metropolitan Water Planning / Water Forum

2831 G Street, Suite 100, Sacramento CA 95816

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

tgohring@waterforum.org

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

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

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

ATTACHMENT 1 TO EXHIBIT B		Total	Cost
TASKS & COST ESTIMATE		Hours	Total
Task 1. Project Initiation, Data Review, KO Meeting	102	\$	15,380
Task 2. NOP and Scoping Meeting	40	\$	5,970
Task 3. Project and Alternatives Description	56	\$	8,300
Task 4. Admin Draft EIR		\$	-
a. Cover, TOC, Exec Summary, Project Description	24	\$	3,250
b. Technical Chapters		\$	-
Groundwater Resources	18	\$	2,730
Water Supply	34	\$	5,170
Water Quality	30	\$	4,690
Fisheries Resources and Aquatic Habitat	36	\$	5,340
Flood Control	20	\$	2,970
Power Supply	16	\$	2,370
Vegetation and Wildlife	128	\$	16,600
Recreation	80	\$	10,970
Land Use and Growth Inducing Impacts	56	\$	7,620
Aesthetics	38	\$	4,970
Cultural Resources	26	\$	3,810
Soils and Geology	34	\$	4,380
Climate Change/GHG	96	\$	14,240
c. Alternatives Analysis	64	\$	9,440
d. Cumulative Impacts	66	\$	9,380
e. Summary of Public Trust Issues	36	\$	5,700
f. Other CEQA-Required Sections	12	\$	1,690
g. Compliance with Federal and State Laws	10	\$	1,450
h. Consultation and Coordination	4	\$	480
i. Appendices	14	\$	1,590
j. Report Preparers/References	4	\$	410
k. Admin Draft EIR Assembly; QA/QC	160	\$	22,120
Task 5. Screencheck Draft EIR	82	\$	11,460
Task 6. Public Draft EIR and NOA	52	\$	6,360
Subtotal Draft EIR (Tasks 1-6)			\$ 188,840

Task 7. Public Meeting on the Draft EIR	28	\$ 3,700
Task 8. Responses to Comments, Admin Final EIR, and MMRP	170	\$ 24,600
Task 9. Screencheck Final EIR	52	\$ 7,110
Task 10. Final EIR	36	\$ 4,800
Task 11. Contribution to Administrative Record	18	\$ 2,410
Task 12. Project Management, Coordination, Meetings	164	\$ 25,240
Total Cost		\$ 256,700
Total Labor Hours	1,806	
DIRECT COSTS		
2. Printing		\$ -
Admin Draft EIR (6 copies at \$80 each)		\$ 480
Screencheck EIR (6 copies at \$80 each)		\$ 480
Public Draft EIR		\$ -
Admin Final EIR (6 copies at \$40 each)		\$ 240
Screencheck Final EIR (6 copies at \$40 each)		\$ 240
Final EIR		\$ -
Reproduction Subtotal		\$ 1,440
3. Cultural Resources Subconsultant (Parus)		\$ 4,730
4. Mileage/Parking		\$ 200
5. Maps/Supplies/Photos/Other Copying		\$ 200
6. Postage/Delivery		\$ 100
7. Miscellaneous		\$ 100
Total Direct Costs		\$ 6,770
TOTAL ESTIMATED FEE		\$ 263,470



ASCENT ENVIRONMENTAL, INC.
FEE SCHEDULE

Calendar Year 2012

Labor Classification	Hourly Rate
Project Principal/Director/Senior Project Manager	\$160 to \$225
Project Manager/Senior Consultant	\$135 to \$190
Environmental Planner/Staff Scientist/Biologist	\$95 to \$150
Environmental Analyst/Staff or Biological Technician	\$70 to \$120
Document Production/Word Processor/Graphics	\$65 to \$100
Administrative Assistant	\$55 to \$85
Direct Expenses	Rates*
Reproduction: 8 ½" by 11" black & white	\$0.08/page
Reproduction: 8 ½" by 11" color	\$0.45/page
Automobile mileage: IRS rate in effect or	\$0.505/mile
Noise meter	½ day/\$100 Full day (daytime only-no overnight)/\$150 Multiple day (24-hour)/\$200 Week/\$500
Per Diem	Standard Government Rates or as negotiated
Other direct costs, including subcontractors	As incurred
*A general and administrative charge of 10% will be applied to all direct costs, including subcontractors	

Labor rates are subject to a 50% surcharge for litigation support. Rates apply to all agreements executed during the calendar year. After the current calendar year, agreements (including contract amendments), will be subject to the rate in effect at the time the agreement is executed.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [check one] Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; [list, if applicable]

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

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

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

communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

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

information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. Term; Suspension; Termination.

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

10. Indemnity.

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

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

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

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

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

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

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

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

B. Additional Insured Coverage

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

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

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

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

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

Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

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

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

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

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

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

- A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization (“SBE”) in accordance with the applicable SBE criteria and requirements.

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

- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

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

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

DEFINITIONS

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

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

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

primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

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

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

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

You May . . .

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

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

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

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

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

You May Also . . .

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