

City Council Report

915 I Street, 1st Floor

www.CityofSacramento.org

Meeting Date: 5/21/2013

Report Type: Consent

Report ID: 2013-00427

Title: Purchase: Global Positioning System (GPS) Based Computer Mapping System [Two-Thirds Vote Required]

Location: Citywide

Issue: Sacramento City Code Section 3.56.090 requires City Council approval for agreements equal to or greater than \$100,000.

Recommendation: Pass a Motion authorizing the City Manager, or the City Manager's designee to: 1) suspend competitive bidding, in the best interest of the City, for the integration and purchase of a GPS based computer mapping system from AeroComputers, Inc. [2/3 vote required]; and 2) enter into an agreement with AeroComputers, Inc., for the integration and purchase of a GPS based computer mapping system in an amount not to exceed \$130,422.

Contact: Steve Quinn, Captain, Metro Division, (916) 808-0700, Police Department.

Presenter: N/A

Department: Police

Division: Metro-Traffic/Air Ops

Dept ID: 11001141

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form

David Womack

5/15/2013 1:39:35 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

5/2/2013 10:31:30 AM

Approvals/Acknowledgements

Department Director or Designee: Sam Somer - 5/14/2013 9:37:44 AM

Description/Analysis

Issue: On September 27, 2012 City Council passed a motion to authorize the purchase of an AeroComputers, Inc., Global Positioning System (GPS)-based computer mapping system with Department of Homeland Security (DHS), Urban Area Security Initiative (UASI) grant funding. This system was installed in the first of two of the Sacramento Police Department (SPD) helicopters and has exceeded expectations. The computer in the second SPD helicopter is also over ten years old and, as a result, requires frequent maintenance in order to ensure functionality.

The SPD recommends suspension of competitive bidding, in the best interest of the City, because AeroComputers, Inc. is the only vendor that can integrate the GPS-based computer mapping system with the existing camera installed in SPD helicopters.

Policy Considerations: The recommendations contained in this report are consistent with: 1) Sacramento City Code Section 3.56.090 requiring City Council approval for agreements equal to or greater than \$100,000; and 2) City Code section 3.56.230(C) allowing the City Council to suspend competitive bidding for any purchase or contract upon a two-thirds vote when City Council determines that it is in the best interests of the City to suspend the competitive bidding requirements.

Economic Impact: None.

Environmental Considerations: Ongoing administrative maintenance activities, such as purchases of supplies, equipment or materials, do not constitute a “project” and are exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines, Sections 15061(b)(3) and 15378(b)(2).

Sustainability Considerations: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The current GPS-based computer mapping system in the second of two Sacramento Police Department helicopters is over ten years old and requires frequent maintenance to ensure functionality. Upgrading the existing system would be more cost effective than continuing to repair an aging system. Suspension of competitive bidding, in the best interest of the City, is recommended, as AeroComputers, Inc. is the only vendor that can provide the mapping system and integrate it with the camera systems currently installed in SPD helicopters.

Financial Considerations: Sufficient Citizens’ Option for Public Safety and Bureau of Justice Assistance Grant (JAG) funds are available for this purchase.

Emerging Small Business Development (ESBD): The purchase of supplies and equipment will be made in accordance with the City’s Emerging and Small Business Development (ESBD) program requirements whenever possible.

PROJECT #:
PROJECT NAME: Helicopter Computer System
DEPARTMENT: Police Department
DIVISION: Metro

CITY OF SACRAMENTO

COMMODITIES AGREEMENT

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

AeroComputers, Inc.
2889 W. Fifth Street Suite 111 Oxnard, CA 93030
(805) 985-3390 / (805) 984-8782 fax

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Invitation to Bid	Workers= Compensation Certificate
Instructions to Bidders	Contractor=s Bid Proposal Form
Certificate(s) of Insurance	ESBD Program Statement
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Declaration of Compliance (Equal Benefits Ordinance)	

2. **Equipment.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the equipment described in Exhibit A. CONTRACTOR shall provide said equipment at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for equipment outside the scope of Exhibit A unless prior to the shipping of such equipment: (a) CONTRACTOR notifies CITY and CITY agrees that such equipment is outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for this additional equipment; and (c) CITY, after notice, approves in writing a Contract Supplement specifying the additional equipment and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Contract Supplement, unless and until this Agreement or any Contract Supplement 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.
3. **Payment.** CITY shall pay CONTRACTOR for equipment furnished 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 equipment furnished pursuant to this Agreement unless pursuant to Section 2, above, CITY approves additional compensation for additional equipment. CONTRACTOR shall submit all billings for said equipment 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.
4. **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

equipment 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.

- 5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the furnishing of equipment or payment therefor, the General Provisions shall control over said terms or conditions.
- 6. **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 F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
- 7. **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.
- 8. **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

APPROVED TO AS FORM:

By: _____

City Attorney

Print name: _____

Title: _____

For: John F. Shirey, City Manager

ATTEST:

City Clerk

Attachments

- Exhibit A – Equipment to be Furnished
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E – Non-Discrimination in Employee Benefits

CONTRACTOR:

AeroComputers, Inc.
NAME OF FIRM

77-0376839
Federal I.D. No.

UC1745456
State I.D. No.

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: _____*)

Mikael Via

Signature of Authorized Person
MIKAEL VIA, C.O.O.
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: AeroComputers

Address: 2889 W. Fifth Street Suite 111 Oxnard, CA 93030

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 F.
2. As a condition of receiving this Contract, 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts 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 Contract 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
COMMODITIES AGREEMENT
EQUIPMENT TO BE FURNISHED

1. Representatives.

The CITY Representative for this Agreement is:

Captain Stephen Quinn
300 Richards Boulevard Sacramento, CA 95811
(916) 808-0701 / (916) 808-0707 fax squinn@pd.cityofsacramento.org

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

The CONTRACTOR Representative for this Agreement is:

Jon Marshall / Marketing Manager
2889 W. Fifth Street Suite 111 Oxnard, CA 93030
(805) 985-3390
sales@aerocomputers.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. Equipment to be Furnished. Furnish the Following:

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

3. Time of Performance. The equipment described herein and in Attachment 1 to Exhibit A shall be furnished during the period of May 1, 2013 to September 30, 2013.

EXHIBIT B

COMMODITIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the furnishing of all equipment set forth in Exhibit A, including normal revisions and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$ 130,422.41.
2. **Billable Rates.** CONTRACTOR shall be paid for the furnishing of all equipment set forth in Exhibit A in the manner set forth in paragraph 25 of Exhibit D of this Agreement (or in the manner set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein).
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper furnishing of equipment 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 for the furnishing of equipment 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 equipment 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 Equipment furnished 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:

*Sacramento Police Department Air Support
2409 Dean Street McClellan, CA 95652
(916) 566-4264 / (916) 566-4265 fax
Attn: Sgt. Mike Hutchins mhutchins@pd.cityofsacramento.org*

5. **Additional Equipment.** Additional Equipment or Supplies related to the equipment CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Equipment shall be provided only when a Contract Supplement authorizing such Additional Equipment is approved by CITY in accordance with CITY's Contract Supplement procedures.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after furnishing of Equipment and Additional Equipment 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 Equipment and Additional Equipment furnished 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.

**EXHIBIT D
COMMODITIES 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 furnishing of Equipment 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 furnishing of Equipment under this Agreement. (As used in this Exhibit D, the term "Equipment" shall include both Equipment and Additional Equipment are 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, provide any services, or furnish any Equipment under this 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, provide any services, or furnish any Equipment. 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 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 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 performance by CONTRACTOR under this Agreement, 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 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 pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform 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 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 performing 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 Equipment furnished 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 furnishing of all Equipment 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 Equipment furnished 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 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 furnishing of Equipment 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)

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) 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 subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

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

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order

11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be

valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
21. **Funding Availability.**
 - A. This Agreement is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.

- B. The City's payment obligation under this Agreement shall not at any time exceed the amount of the funds appropriated and approved for such purpose by the Sacramento City Council.
- C. This Agreement shall terminate without penalty at the end of the fiscal year in the event funds to make payment under this Agreement are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Agreement shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject further, to the limitation in subsection 9 of these General Conditions.
- D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of this Agreement.
- 22. Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under this Agreement will be accomplished.
- 23. Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
- 24. Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate this Agreement either for cause or for convenience as provided in Section 9 of these General Conditions.
- 25. Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered, Equipment furnished, or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
- 26. Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of this Agreement. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
- 27. Guarantee.** The Contractor guarantees that all merchandise delivered and/or work or services performed under this Agreement shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of this Agreement, the Contractor shall be required to correct the same at Contractor's sole expense.

28. 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 this 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 this Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



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

On (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, Procurement Services Division, 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, Procurement Services Division, 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, Procurement Services Division, at the same address, containing the details of the alleged violation.



Estimate

April 23, 2013

AeroComputers, Inc.

AeroComputers, Inc.
 2889 W. Fifth St. #111
 Oxnard, CA 93030-4405
 Phone: (805) 985-3390
 FAX: (805) 984-8782
 Email: erp@aerocomputers.com

4388



Bill To:

Sacramento Police Department
 Mike Hutchins
 5770 Freeport Boulevard
 Sacramento, CA 95822

Ship To:

Sacramento Police Department
 Mike Hutchins
 5770 Freeport Boulevard
 Sacramento, CA 95822
 Contact: Sacramento Police Department

Seller	Payment Terms	FOB Point	Shipping Terms	Ship Via	Req. Ship Date
SBertling	NET 30	Origin	Prepaid & Billed	U.S. FedEx Ground	5/26/13

Item #	Type	Item / Description	Unit Price	Qty Ordered	Total Price
1	Kit	UC-5100 Kit - UltiChart 5100 CPU; USML Cat XII(e); SME(*) when integrated, Sch.B 9014.20	\$ 0.00	1 ea	\$ 0.00
2	Sale	GS-UC-5100 Base Components - GSA UC-5100; USML Cat XII(e); SME(*) when integrated, Sch.B 9014.20	\$ 36,795.40	1 ea	\$ 36,795.40
3	Sale	UltiChart Software - AeroComputers Proprietary Situational Software, USML Cat XII(e); SME(*) when integrated	\$ 0.00	1 ea	\$ 0.00
4	Sale	300204A-6B - Hard Drive Assy (120GB SSD)	\$ 0.00	1 ea	\$ 0.00
5	Sale	5100VS - UC-5100 Video Switching Open Market Item	\$ 995.00	1 ea	\$ 995.00
6	Sale	IMU Assy - IMU Sensor with Enclosure; ECN XII(d)* Open Market Item	\$ 18,557.00	1 ea	\$ 18,557.00
7	Sale	300219-2 - IMU Receiver w/software integration	\$ 22,322.00	1 ea	\$ 22,322.00
8	Kit	Gimbal Selection Kit - Gimbal Selection Kit	\$ 0.00	1 ea	\$ 0.00
9	Kit	FSI 8500 - FSI 8500, ECN XII(e)*	\$ 0.00	1 ea	\$ 0.00
10	Sale	ViewSyncL1 - View Sync Level 1-Includes software required for basic camera geopointing (no IMU integration), ECN XII(e)* Open Market Item	\$ 5,995.00	1 ea	\$ 5,995.00
11	Sale	ViewSyncL2 - View Sync Level 2 - External IMU integration software: ECN XII (e)* Open Market Item	\$ 5,995.00	1 ea	\$ 5,995.00
12	Sale	GI-HCTRL - Gimbal Interface - Hand Controller Open Market Item	\$ 1,595.00	1 ea	\$ 1,595.00
13	Sale	GP-232 - Gimbal Protocol - RS-232 Communications	\$ 0.00	1 ea	\$ 0.00
14	Sale	CA - California, USML Cat XII(e); SME(*) when integrated, SchB: 9014.90	\$ 0.00	1 ea	\$ 0.00
15	Sale	Parcel Data System 2+ - Parcel Data, Second or More	\$ 995.00	1 ea	\$ 995.00

April 23, 2013 3:48:37 PM PDT

Page 1 of 2



Estimate

April 23, 2013

AeroComputers, Inc.

4388

Item #	Type	Item / Description	Unit Price	Qty Ordered	Total Price
		Systems, USML Cat XII(e); SME(*) when integrated, SchB 9014.90 Open Market Item			
16	Sale	Parcel Data OPT HI-RES - Optional HI-RES Tactical Parcel Map (Requires "Parcel Data" Purchase), USML Cat XII(e); SME(*) when integrated, SchB 9014.90	\$ 2,499.00	1 ea	\$ 2,499.00
17	Sale	SWM-P - Annual Software Maintenance - One year of software updates, street and road map updates, FAA data updates; telephone tech support and AeroParcels; USML Cat XII(e); SME(*) when integrated, Sch.B 9014.20 Open Market Item	\$ 2,495.00	1 ea	\$ 2,495.00
18	Kit	GS-Install Kit UC5100 - GSA Install Kit UC5100; USML Cat XII(e); SME(*) when integrated, Sch.B 9014.90	\$ 2,755.40	1 ea	\$ 2,755.40
34	Kit	AK-Selection Kit - AeroComputers Keyboard Options	\$ 0.00	1 ea	\$ 0.00
35	Kit	AK-4 Kit - AK-4 Keyboard Kit with Mating Connector	\$ 0.00	1 ea	\$ 0.00
36	Sale	GS-AK-4NL - GSA AK-4 Loose Keyboard, NVIS B Green, USML Cat XII(e); SME(*) when integrated, SchB 8471.60.20	\$ 1,941.86	1 ea	\$ 1,941.86
37	Kit	AD-12N Monitor Kit - AD-12 NVIS Monitor Kit; ECN 9A991.d, SchB 9013.80.70	\$ 17,392.50	1 ea	\$ 17,392.50
38	Sale	AD-12N - 12" Display with NVG; ECN 9A991.d, SchB 9013.80.70	\$ 0.00	1 ea	\$ 0.00
39	Sale	D38999 26FE35SA - RFI PLUG, 38999 SIII	\$ 0.00	1 ea	\$ 0.00
40	Sale	D38999/26WB4SN - Power Connector	\$ 0.00	1 ea	\$ 0.00
41	Sale	M85049/38S17N - D86 - SELF LOCK STRAIN RELIEF OPEN STRT	\$ 0.00	1 ea	\$ 0.00
42	Sale	M85049/38-11W - D38999 CANNON PLUG BACK SHELL, SIZE 11 (B)	\$ 0.00	1 ea	\$ 0.00
43	Shipping	UC-5100 Shipping - Shipping and Handling Open Market Item	\$ 195.00	1 ea	\$ 195.00
44	Shipping	DISPLAY SHIPPING - SHIPPING AND HANDLING	\$ 175.00	1 ea	\$ 175.00

Approval: _____ Date: _____

SubTotal	\$ 120,703.16
Sales Tax	\$ 9,719.25
TOTAL	\$ 130,422.41

QUOTE VALID FOR 90 DAYS. ESTIMATED DELIVERY DATE 60 DAYS A.R.O.

1. Terms and Conditions. These Terms and Conditions shall be binding for any order ("Order") placed by Buyer. If Buyer objects to one or more of the terms herein, such objection must be in writing and received by and accepted by Seller in writing prior to the commencement of performance by Seller. Any of Buyer's conditions that are contrary to these Terms and Conditions must be accepted in advance in writing by Seller. Any purchase Order or other written form of Buyer shall be construed as an offer and shall not become an effective binding part of these Terms and Conditions, unless signed in advance by an authorized officer of Seller, together with a written agreement that it is incorporated into these Terms and Conditions. Any alteration, variance, or waiver of these Terms and Conditions requires the written approval of an authorized officer of Seller.

2. Price. Prices quoted by Seller are valid for sixty (60) days from date of quotation or as otherwise extended in writing by Seller, and must be accepted in writing within this time. After expiration of this period, Seller may, at its discretion, extend the time of quotation or make a revised quotation. Seller reserves the right to correct clerical or typographical errors at any time, even after acceptance. All prices are in United States dollars ("**USD**").

3. Shipment and Delivery. Seller shall arrange delivery with a common carrier ("Shipper") but Buyer shall be solely responsible for all costs and expenses of delivery from Seller's shipping point and Seller shall invoice Buyer for all shipping expenses. "F.O.B." means that title and right of possession passes upon delivery to Shipper or payment in full to Seller, whichever occurs last. Shipping dates and/or delivery dates are quoted based on conditions prevailing on the date of the quotations and are subject to rescheduling. All Orders, including custom product Orders, are subject to reasonable rescheduling of the delivery date, and failure of Seller to deliver by the original delivery date shall not be deemed a breach of these Terms and Conditions. The time of delivery shall be deemed to have been complied with when the product has been shipped or delivered into the custody of the Shipper at the designated site before expiration of the time of delivery indicated on the Seller's Order Confirmation. Seller need not ship or deliver as quoted if Buyer has not met its payment or other contractual obligations. Buyer shall be responsible for the payment of any applicable customs and duties fees.

Seller shall not be liable for delays in Seller's performance due to any causes beyond its reasonable control or due to acts of Buyer, acts of God, changes in local, State or Federal laws or regulations, fires, strikes, floods, epidemics, quarantine restrictions, terrorism, riot or other civil unrest, war, acts of violence, freight embargoes, delays in transportation, etc. (collectively, "**Force Majeure Events**").

In no event shall Buyer be entitled to any damages as a result of delays in delivery or late delivery.

Buyer, which for purposes of this paragraph shall include Buyer's installer and Buyer's agent, shall have up to ten (10) days after receipt to inspect the product. Unless Seller is notified in writing to the contrary during this period, delivered

items shall be deemed accepted. Claims for shipment defects, damages or shortages shall be waived unless made within ten (10) days of receipt of the product by Buyer.

4. Payments. Seller's payment terms are payment in full within thirty (30) days from the date of the invoice. If the product is not paid for in full, Seller retains a security interest in the product and shall have all rights of a secured party thereon pursuant to the provisions of the California Commercial Code (the "**Code**"). Buyer shall, upon request of Seller, execute any Security Agreement, Financing Statement or other document required by the Code, and Seller shall have the right to require receipt of such executed documents prior to shipment of product. In furtherance of the foregoing, an irrevocable power, coupled with an interest, is hereby granted and reserved unto Seller to execute such Security Agreement, Financing Statement or other document on Buyer's behalf and stead. Invoices will be submitted at time of shipment. In the case of partial shipments, payment shall be made prorata based upon each shipment. If Buyer does not make payments when due, it shall without notice be liable to pay interest on overdue amounts from the due date, at a rate of one and one-half percent (1.5%) per month or the maximum amount allowable by law, whichever is less. Payment of such interest does not release Buyer from its obligation to make payments on the agreed dates.

Buyer shall not, at any time, be entitled to set off any amount owed by Seller to Buyer against any amount payable by Buyer to Seller.

All products that are returned must be in unused, undamaged condition and are subject to a 15% restocking fee.

5. Passage of Title. The title and right of possession to the product remains with Seller until the full contract price (including, if any, deferred payments and any interest charges) has been paid to Seller. Buyer agrees to perform all acts necessary to protect and maintain this title and right. Passage or non-passage of title shall not affect risk of loss.

6. Risk of Loss. Seller bears the risk of loss or damage to the product from the time that Seller delivers to Shipper and during all transportation and delivery of the product to the site designated by Buyer; provided, however, that if Buyer designates a Shipper other than a nationally recognized shipper such as FedEx or UPS, Buyer shall bear all risk of loss or damage from Seller's delivery to Shipper and during all transportation and delivery.

7. Warranty and Damages Limitation. Seller warrants that the product delivered and related services, such as training, rendered pursuant to an Order will be free from defects in material and workmanship for a period of twelve (12) months commencing on the earlier of ninety (90) days after receipt of the product or the date the aircraft is accepted from Buyer's agent by the end user.

8. Warranty Repairs. Repairs outside the warranty period shall be at standard Seller rates and shall be warranted for three (3) months from the date of repair or, if the repair is performed under this warranty, for the remainder of the original warranty period. Buyer shall report



any claimed defect in writing to Seller upon discovery and in any event, within the warranty period. Upon receiving a Return Material Authorization from Seller, Buyer shall ship the defective product standard shipping to Seller to: AeroComputers, 2889 West 5th Street, #111, Oxnard, CA 93030. Seller, at its sole discretion, shall promptly repair or replace the product. Buyer shall be solely responsible for all shipping costs and expenses to ship the product to the repair facility. Seller shall be responsible for all shipping costs and expenses to return the product to Buyer. If Buyer repairs or replaces the product without Seller's prior written approval, Seller is relieved of obligation to Buyer under this section with respect to such product. The product shall not be deemed defective by reason of normal wear and tear and this limited warranty shall not apply to (i) product (or the training services applicable to such product) where the product has been subjected to mishandling, misuse, abuse, alteration, damage, neglect or improper or inadequate storage, maintenance, repair or installation, (ii) product (or the training services applicable to such product) that has been subjected to unauthorized or improper repair, installation, assembly, processing or otherwise that alters physical or electrical properties, (iii) damage due to operation of the product other than as per the specifications or use with other components, materials or equipment, (iv) any defect, malfunction or failure caused by accidents, misuse, abuse, unauthorized repair, improper installation or removal of component parts, or use of the product with components or equipment for which it is not intended or (v) any Force Majeure Event. No other express warranty is given and no affirmation of Seller, by words or action, will constitute a warranty.

The following items are not included under this limited warranty: connectors; cables; antennae; and Barry Mounts. The UC-5100 tactical mission mapping system; keyboard; hardware interface (HIF); Inertial Measurement Unit (IMU); Digital Video Recorder (DVR); and monitors are included under this limited warranty.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND WAIVED TO THE FULLEST EXTENT PERMITTED BY LAW. NO EMPLOYEE OF SELLER IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS LIMITED WARRANTY. There are no warranties which extend beyond the description herein.

9. Limitation of All Remedies. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL,

WORK STOPPAGE, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. BUYER'S USE OF SELLER'S PRODUCT IS AT BUYER'S SOLE RISK. SELLER'S LIABILITY UNDER THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE AMOUNT SELLER RECEIVED FROM BUYER FOR THE PURCHASE OF THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT SELLER RECEIVED FROM BUYER FOR THE PURCHASE OF SELLER'S PRODUCT, EVEN IF SELLER SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

10. Allocation of Risks. These Terms and Conditions allocate the risks of product failure between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the product. Buyer acknowledges that it has read these Terms and Conditions, understands it and is bound by its terms.

11. Termination for Convenience. Upon thirty (30) days written notice to Seller, Buyer may cancel all or any separable part of an Order. In such event, unless either party shall have defaulted or been in default of performance hereof, either party shall have all rights and obligations accruing to it both at law or in equity, including Buyer's right to title and possession of product paid for and/or Seller's right to title and possession of product not paid for. Seller shall be reimbursed for actual and reasonable cost, plus a reasonable profit for work performed to date of termination, as mutually agreed upon by the parties in good faith.

12. Termination for Default. Either party may terminate an Order or work under an Order in whole or in part (i) immediately by written notice if the other party commits a material breach of any one or more of its terms and fails to cure such default within ten (10) days after the non-breaching party gives written notice of such breach, or (ii) upon five (5) days advance written notice if either party becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors.

13. Changes. Prior to delivery, Buyer may make reasonable changes in the character or quantity of the product, or in the manner or time of performance of an Order if communicated to Seller in a writing signed by a duly authorized representative of Buyer and accepted in writing by a duly authorized representative of Seller. An equitable adjustment in the price and time for performance will be mutually agreed to by the parties in writing, acting in good faith, if such changes result in a decrease or increase in the Seller's cost or time of performance. Notwithstanding the above, Seller may, without Buyer's approval, make revisions to the product that do not affect form, fit or function.

14. Confidentiality; Proprietary Information. All drawings, designs, specifications, information, data, prototypes, samples, software and other items first made, conceived or supplied by Seller to Buyer in connection with Seller's performance hereunder are the confidential and



proprietary information of Seller and Seller owns and shall retain and control all rights, title and interest to such information. Buyer agrees to execute any documentation necessary to perfect Seller's title therein. Buyer shall not reverse engineer, disassemble or decompile any prototypes, software, product, or other tangible objects which embody Seller's confidential and proprietary information provided to Buyer hereunder. Buyer shall hold all such information in confidence and use it solely as strictly necessary to utilize the product and for no other purpose, and shall not reproduce, distribute or disclose such confidential and proprietary information to any third party without Seller's prior written consent, and shall only disclose such Seller's confidential and proprietary information to employees and independent contractors who may require use of such confidential and proprietary information in the performance of duties specifically with respect to Buyer's use of the product; provided, however, that such employees and independent contractors must agree to keep such information confidential and shall be bound by confidentiality obligations at least as strict as set forth in this paragraph.

Seller hereby grants to Buyer a perpetual, fully paid up, royalty-free, non-assignable or non-transferable and non-exclusive license to use such information solely to the extent necessary to utilize the product. Buyer acknowledges that Seller has obtained licenses, but has no ownership, in the following component parts of the product, included but not limited to: Microsoft Windows XP Embedded, and Tom Tom map data. Buyer acknowledges that Buyer accepts Microsoft's End User License Agreement (EULA), which by this reference is made a part of this Agreement or these Terms and Conditions.

The confidentiality obligations in this paragraph shall survive the sale and transfer of the product to Buyer.

15. Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in these Terms and Conditions shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

16. No Implied Waiver. The failure of either party at any time to require performance by the other party or make any election under any provision of these Terms and Conditions shall in no way affect the party's right to require such performance or make such election at any time thereafter, nor shall the waiver of either party of a breach of any provision of these Terms and Conditions constitute a waiver of any succeeding breach of the same or any other provision.

17. Entire Agreement. These Terms and Conditions (including all licenses and exhibits attached hereto), the Seller's Order, Buyer's invoice and the specifications for the specific product purchased constitutes the entire agreement between the parties hereto with respect to the subject matter

hereof and supersedes all prior agreements and understandings, whether oral or written, between them regarding the subject matter hereof. Buyer and Seller each acknowledge that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not set forth herein.

18. Modification/Severability/Further Assurances. These Terms and Conditions may not be modified or amended in any way unless such modification or amendment is in writing and signed by an authorized officer of each of Seller and Buyer. If any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be invalid under any applicable law, the portion deemed to be invalid will be deemed omitted, and the remainder of these Terms and Conditions shall remain enforceable. The parties agree to execute any further documents and provide any requested assurance reasonably necessary for the parties to effectuate the purpose of these Terms and Conditions.

19. Attorneys' Fees. In the event of a claim, suit or controversy, including without limitation, a suit to collect payment or an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to, phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees to be fixed by the court. The court or arbitrator shall determine the party that is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. Such recovery shall include court costs, out-of-pocket expenses and attorneys' fees on appeal, if any.

20. Governing Law; Jurisdiction; Venue. These Terms and Conditions shall in all respects be construed and governed by the laws of the State of California, without regard to the laws as to choice or conflict of laws. Buyer and Seller agree and accept that any legal action or proceeding with respect to the purchase and sale of the product and these Terms and Conditions shall be brought in the Federal or state courts for the State of California, County of Ventura, and the parties expressly waive any objection to personal jurisdiction, venue or *forum non conveniens*.

21. Systems Limitations. The UC-5100 is not approved by the Federal Aviation Administration (FAA). The UC-5100 is not intended to be used as a navigation tool. Special equipment approved by the FAA for navigational purposes normally carries Supplemental Type Certificate (STC) and/or Technical Standard Order (TSO) certifications and are specifically designed for navigation. The UC-5100 is designed for use by the Tactical Flight Officer as a means of managing tactical operations in public use aircraft by providing enhanced situational awareness and integration with other mission equipment package components.

Under Title 14, Code of Federal Regulations, Part 43, it is the obligation of the person making any alteration of an aircraft to determine that the alteration can be made in accordance with all applicable standards and legal requirements. The



purchaser of a UC-5100 should confer with his/her installer in order to determine whether the UC-5100 can be installed in the intended aircraft in accordance with applicable regulations, orders, conditions and standards. Seller disclaims any representation or warranty of any kind, whether express or implied, that the UC-5100 is appropriate for installation on or in any particular type of aircraft and Seller disclaims any liability or responsibility to any purchaser arising from the installation or use of the UC-5100 on or in any aircraft.

22. Equal Opportunity and Affirmative Action. In performing the services required under an Order, Seller hereby represents and warrants that it is an equal opportunity employer and shall conform to all affirmative action and other applicable requirements. Accordingly, Seller shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.

Microsoft Software License Terms for:

Windows XP Embedded and Windows Embedded Standard Runtime

These license terms are an agreement between you and *AeroComputers, Inc.* Please read them. They apply to the software included on this device. The software also includes any separate media on which you received the software.

The software on this device includes software licensed from Microsoft Corporation or its affiliate.

The terms also apply to any Microsoft

- Updates,
- Supplements,
- Internet-based services, and
- Support services

for this software, unless other terms accompany those items. If so, those terms apply. If you obtain updates or supplements directly from Microsoft, then Microsoft, and not *AeroComputers, Inc.*, licenses those to you.

As described below, using some features also operates as your consent to the transmission of certain standard computer information for Internet-based services.

By using the software, you accept these terms. If you do not accept them, do not use or copy the software. Instead, contact *AeroComputers, Inc.* to determine its return policy for a refund or credit.

If you comply with these license terms, you have the rights below.

1. Use Rights.

You may use the software on the device with which you acquired the software.

2. Additional Licensing Requirements and/or Use Rights.

- a. Specific Use.** *AeroComputers, Inc.* designed this device for a specific use. You may only use the software for that use.
- b. Other Software.** You may use other programs with the software as long as the other programs
 - Directly support the manufacturer's specific use for the device, or
 - Provide system utilities, resource management, or anti-virus or similar protection.

Software that provides consumer or business tasks or processes may not be run on the device. This includes email, word processing, spreadsheet, database, scheduling and personal finance software. The device may use terminal services protocols to access such software running on a server.

c. Device Connections.

- You may use terminal services protocols to connect the device to another device running business task or processes software such as email, word processing, scheduling or spreadsheets.
- You may allow up to ten other devices to access the software to use

- File Services,
- Print Services,
- Internet Information Services, and
- Internet Connection Sharing and Telephony Services.

The ten connection limit applies to devices that access the software indirectly through "multiplexing" or other software or hardware that pools connections. You may use unlimited inbound connections at any time via TCP/IP.

3. Scope of License. The software is licensed, not sold. This agreement only gives you some rights to use the software. *AeroComputers, Inc.* and Microsoft reserve all other rights. Unless applicable law gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that allow you to use it only in certain ways. For more information, see the software documentation or contact *AeroComputers, Inc.* Except and only to the extent permitted by applicable law despite these limitations, you may not:

- Work around any technical limitations in the software;
- Reverse engineer, decompile or disassemble the software;
- Make more copies of the software than specified in this agreement;
- Publish the software for others to copy;
- Rent, lease or lend the software; or
- Use the software for commercial software hosting services.

Except as expressly provided in this agreement, rights to access the software on this device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access this device.

You may use remote access technologies in the software such as Remote Desktop to access the software remotely from another device. You are responsible for obtaining any licenses required for use of these protocols to access other software.

- Remote Boot Feature. If the *AeroComputers, Inc.* enabled the device Remote Boot feature of the software, you may
 - (i) use the Remote Boot Installation Service (RBIS) tool only to install one copy of the software on your server and to deploy the software on licensed devices as part of the Remote Boot process; and
 - (ii) use the Remote Boot Installation Service only for deployment of the software to devices as part of the Remote Boot process; and
 - (iii) download the software to licensed devices and use it on them.

For more information, please refer to the device documentation or contact *AeroComputers, Inc.*

- Internet-Based Services. Microsoft provides Internet-based services with the software. Microsoft may change or cancel them at any time.
 - a. **Consent for Internet-Based Services.** The software features described below connect to Microsoft or service provider computer systems over the Internet. In some cases, you will not receive a separate notice when they connect. You may

switch off these features or not use them. For more information about these features, visit

<http://www.microsoft.com/windowsxp/downloads/updates/sp2/docs/privacy.msp>
x.

By using these features, you consent to the transmission of this information. Microsoft does not use the information to identify or contact you.

b. **Computer Information.** The following features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software. Microsoft uses this information to make the Internet-based services available to you.

- **Web Content Features.** Features in the software can retrieve related content from Microsoft and provide it to you. To provide the content, these features send to Microsoft the type of operating system, name and version of the software you are using, type of browser and language code of the device where the software was installed. Examples of these features are clip art, templates, online training, online assistance and Appshelp. These features only operate when you activate them. You may choose to switch them off or not use them.
- **Digital Certificates.** The software uses digital certificates. These digital certificates confirm the identity of Internet users sending X.509 standard encrypted information. The software retrieves certificates and updates certificate revocation lists. These security features operate only when you use the Internet.
- **Auto Root Update.** The Auto Root Update feature updates the list of trusted certificate authorities. You can switch off the Auto Root Update feature.
- **Windows Media Player.** When you use Windows Media Player, it checks with Microsoft for
 - Compatible online music services in your region;
 - New versions of the player; and
 - Codecs if your device does not have the correct ones for playing content. You can switch off this feature. For more information, go to:
<http://microsoft.com/windows/windowsmedia/mp10/privacy.aspx>.
- **Windows Media Digital Rights Management.** Content owners use Windows Media digital rights management technology (WMDRM) to protect their intellectual property, including copyrights. This software and third party software use WMDRM to play and copy WMDRM-protected content. If the software fails to protect the content, content owners may ask Microsoft to revoke the software's ability to use WMDRM to play or copy protected content. Revocation does not affect other content. When you download licenses for protected content, you agree that Microsoft may include a revocation list with the licenses. Content owners may require you to upgrade WMDRM to access their content. Microsoft software that includes WMDRM will ask for your consent prior to the upgrade. If you decline an upgrade, you will not be able to access content that requires the upgrade. You may switch off

WMDRM features that access the Internet. When these features are off, you can still play content for which you have a valid license.

c. *Misuse of Internet-based Services.* You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

- 4. Windows Update Agent (also known as Software Update Services).** The software on the device includes Windows Update Agent ("WUA") functionality that may enable your device to connect to and access updates ("Windows Updates") from a server installed with the required server component. Without limiting any other disclaimer in this Microsoft Software License Terms or any EULA accompanying a Windows Update, you acknowledge and agree that no warranty is provided by MS, Microsoft Corporation or their affiliates with respect to any Windows Update that you install or attempt to install on your device.
- 5. Product Support.** Contact *AeroComputers, Inc.* for support options. Refer to the support number provided with the device.
- 6. Backup Copy.** You may make one backup copy of the software. You may use it only to reinstall the software on the device.
- 7. Proof Of License.** If you acquired the software on the device, or on a disc or other media, a genuine Certificate of Authenticity label with a genuine copy of the software identifies licensed software. To be valid, this label must be affixed to the device, or included on or in *AeroComputers, Inc.*'s software packaging. If you receive the label separately, it is not valid. You should keep the label on the device or packaging to prove that you are licensed to use the software. To identify genuine Microsoft software, see <http://www.howtotell.com>.
- 8. Transfer to a Third Party.** You may transfer the software only with the device, the Certificate of Authenticity label, and these license terms directly to a third party. Before the transfer, that party must agree that these license terms apply to the transfer and use of the software. You may not retain any copies of the software including the backup copy.
- 9. Not Fault Tolerant.** **The software is not fault tolerant. *AeroComputers, Inc.* installed the software on the device and is responsible for how it operates on the device.**
- 10. Restricted Use.** The Microsoft software was designed for systems that do not require fail-safe performance. You may not use the Microsoft software in any device or system in which a malfunction of the software would result in foreseeable risk of injury or death to any person. This includes operation of nuclear facilities, aircraft navigation or communication systems and air traffic control.
- 11. No Warranties for the Software.** **The software is provided "as is". You bear all risks of using it. Microsoft gives no express warranties, guarantees or conditions. Any warranties you receive regarding the device or the software do not originate from, and are not binding on, Microsoft or its affiliates. When allowed by your local laws, *AeroComputers, Inc.* and Microsoft exclude implied warranties of merchantability, fitness for a particular purpose and non-infringement.**
- 12. Liability Limitations.** **You can recover from Microsoft and its affiliates only direct damages up to two hundred fifty U.S. Dollars (U.S. \$250.00). You cannot**

recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to:

- Anything related to the software, services, content (including code) on third party internet sites, or third party programs; and
- Claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if Microsoft should have been aware of the possibility of the damages. The above limitation may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.

13.Export Restrictions. The software is subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information, see www.microsoft.com/exporting.

