

**Meeting Date: 5/28/2013**

**Report Type:** Consent

**Report ID:** 2013-00401

**Title: Agreement: Azteca Cityworks Upgrade Project**

**Location:** Citywide

**Issue:** Upgrading the Computerized Maintenance Management System (CMMS) to improve business processes and services will simplify data entry for field staff, better integrate the Department of Utilities Geographic Information System, and improve overall data quality.

**Recommendation:** Pass a Motion authorizing the City Manager or the City Manager's designee to sign a professional services agreement with GeoIT to upgrade the Computerized Maintenance Management System, for an amount not to exceed \$275,000.

**Contact:** Michael Malone, Field Services Manager, (916) 808-6226; Ken Swartz, Stores Administrator, (916) 808-6276, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** Field Services Administration

**Dept ID:** 14001451

**Attachments:**

1-Description/Analysis

2-Background

3-Professional Services Agreement

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**City Attorney Review**

Approved as to Form

Joe Robinson

5/22/2013 10:25:36 AM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt

Russell Fehr

5/14/2013 6:56:39 PM

**Approvals/Acknowledgements**

Department Director or Designee: Dave Brent - 5/21/2013 1:40:03 PM

## **Description/Analysis:**

**Policy Considerations:** The recommendations in this report are in accordance with the City's policy for the procurement of professional services, AP 4102, and the provisions of City Code Chapter 3.64, governing agreements for professional services.

**Economic Impacts:** None

**Committee/Commission Action:** Not applicable

## **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The Environmental Services Manager has determined that the proposed project is exempt from the California Environmental Quality Act (CEQA) under Section Number 15061(b)(3) of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**Sustainability Considerations:** Upgrading Field Services CMMS and GIS systems supports the Sustainability Master Plan goals of conserving the use and protecting the sources of water and providing exceptional flood protection.

**Rationale for Recommendation:** In March 2013, the DOU issued a Request for Qualifications (RFQ) for the Azteca Cityworks Upgrade Project. Three Statements of Qualifications (SOQs) were received. An evaluation team of City staff reviewed the SOQs, analyzing each firm's approach and proposed scope of services, project budget, overview, project team organization, member experience, and related experience. The evaluation team ranked GeoIT as the most qualified firm to perform the requested services. The GeoIT team has extensive experience in both Cityworks Anywhere and the latest versions of Cityworks Server AMS, making them highly qualified to perform this upgrade.

**Financial Considerations:** The purchase of professional services will be charged equally to the operating budgets for DOU Water Distribution, Wastewater, and Drainage Collections. Sufficient funding for the one year agreement, which will not exceed \$275,000, is provided in the FY 2012/13

operating budget and FY 2013/14 proposed budget subject to approval by Council.

**Emerging Small Business Development (ESBD):** None of the firms responding to the RFQ are emerging or small business enterprises.

## Background

The Department of Utilities (DOU) has an ongoing need to modernize its operational computer systems to ensure a high level of services to its customers. In March 2013, DOU Field Services issued Request for Qualifications No. Q131411451004 to procure computer engineering consultation services to upgrade our Computerized Maintenance Management System (CMMS) to Azteca Cityworks Server AMS 2012.1. There were three responses to the advertisement by GeoIT, Brown and Caldwell, and Timmons Group.

An evaluation team reviewed the three responses and ranked GeoIT as the most qualified to provide these services. The evaluation results are summarized below.

The term of the contract is one year ending May 31, 2014. The maximum not-to-exceed amount is \$275,000.

### Statement of Qualifications Rating Summary

	GeoIT	Brown & Caldwell	Timmons Group	Total Possible
<b>1. Project Team Organization and Team Member Experience</b>				
A. Firm Approach and Proposed Scope of Services	13.25	12.00	10.25	(15)
B. Proposed Budget	07.50	08.00	10.00	(10)
C. Experience of Project Manager	09.50	08.25	07.50	(10)
D. Team Structure and Organization	08.25	08.25	07.25	(10)
E. Total Team Experience and Qualifications	08.75	07.75	08.00	(10)
F. Availability (Local Office Project Manager & Resources)	07.75	09.50	07.50	(10)
<b>2. Related Experience</b>				
Experience with similar projects	08.75	08.75	10.75	(15)
<b>3. ESBD Participation</b>				
Meets CITY goals	00.00	00.00	00.00	(5)
<b>4. Proposal Overview</b>				
Completeness, Clarity, Balance	09.25	09.25	07.25	(10)
<b>Total</b>	<b>73.00</b>	<b>71.75</b>	<b>68.50</b>	<b>(95)</b>

PROJECT #: Z14003603  
PROJECT NAME: Azteca Cityworks Upgrade Project  
DEPARTMENT: Utilities Department  
DIVISION: Field Services Division

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT  
FOR ARCHITECTS, LANDSCAPE  
ARCHITECTS, PROFESSIONAL ENGINEERS,  
AND PROFESSIONAL LAND SURVEYORS**

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

*GeoIT Resources, Inc.  
6590 Lockheed Drive  
Redding, CA 96002  
Ph: 530-222-0926/Fax: 530-222-2948*

("CONTRACTOR"), who agree as follows:

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

4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

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

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

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

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

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

ATTEST:

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

Attachments

Exhibit A - Scope of Service

Exhibit B - Fee Schedule/Manner of Payment

Exhibit C - Facilities/Equipment Provided

Exhibit D - General Provisions

Exhibit E - Non-Discrimination in Employee Benefits

**CONTRACTOR:**

\_\_\_\_\_  
NAME OF FIRM

\_\_\_\_\_  
Federal I.D. No.

\_\_\_\_\_  
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: \_\_\_\_\_*)

\_\_\_\_\_  
**Signature of Authorized Person**

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

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

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

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

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

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

after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

## EXHIBIT A

### PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

#### SCOPE OF SERVICES

##### 1. Representatives.

The CITY Representative for this Agreement is:

*Elsie Fong/Program Specialist  
City of Sacramento  
Department of Utilities  
Field Services Division  
Phone: 916-808-4079/Fax: 916-808-6293  
Email: emfong@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:

*Brian Hoefler/President  
6590 Lockheed Drive  
Redding, CA 96002  
Ph: 530-222-0926/Fax: 530-222-2948  
E-mail: bhoefler@geoitresources.com*

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

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

##### 3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who

perform work that is solely clerical, ministerial, manual or secretarial are not “consultants.”

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

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

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

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

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

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

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

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

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

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

*The Consultant will ensure that key team members (Brian Hoefler, Steve Shaffer, Sharlene Rakestraw, Marcus Harner, Ariana Gonzales and Ramon Gallegos) will be committed to the proposed hours in the budget of this project. The City will have the right to cancel the contract in the event of an unapproved change of team members.*

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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**Task 1.1 Project Team Assessment and Risk Planning**

**Objective**

Review and document project team roles and responsibilities; identify project risks that may cause problems or delays in the project and determine response plans to address the risks should they occur.

**Activities**

Consultant will introduce the project team and complete a high-level RACI (Roles and Responsibilities) diagram in the format provided by the City's project manager.

During the team assessment task the project team members will have an opportunity to state their roles and level of responsibility, key tasks and deliverables for the project.

Consultant will conduct a risk planning workshop with the project team, key stakeholders and subject matter experts (SME) to produce a risk register in the format provided by the City's project manager and accompanying plans that will be monitored and executed as needed throughout the project life cycle.

During the risk planning task the project team members will identify risk threats and opportunities that affect the project objectives.

**Schedule:** June 2013

**Deliverables:** Project kickoff meeting; Project Organization Chart; RACI diagram; Risk planning workshop; Risk register and Response plans

**City Participation:** Participate in the project kickoff meeting; provide existing organization charts and RACI and risk register templates prior to the kickoff meeting; describe the City's project team roles and responsibility levels, key tasks and deliverables for the duration of the project.

**Task 1.2 Stakeholder Needs Analysis**

**Objective**

Identify and document project stakeholder needs to produce the Needs Assessment (Requirements) Technical Memorandum, and WBS (Work Breakdown Structure)

**Activities**

## Attachment 1 to Exhibit A

### City of Sacramento

### Azteca Cityworks Upgrade Project

#### Scope of Services

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Consultant will perform a needs analysis for project stakeholders to better understand the required tasks for project success. The needs analysis should identify and validate the detailed user requirements, processes, and workflows that are critical to upgrading the Cityworks CMMS.

Consultant will conduct a needs assessment workshop and create a Needs Assessment Technical Memorandum based on the information collected at the workshop. While existing documentation will form the foundation of the system upgrade and deployment, it is essential that the existing documented requirements are independently reviewed and validated to ensure that there are no underlying implementation issues and that requirements, processes, and work flows are defined in sufficient detail for project success. Consultant must balance and ensure user requirements are met within the project objectives taking proper measures to resolve conflicts as needed.

Once the existing information has been collected and documented into the draft Needs Assessment Technical Memorandum, Consultant will meet with the City to discuss any gaps, ambiguities, or issues identified. Based on the meeting outcome, the Needs Assessment Technical Memorandum will be finalized and a WBS developed.

During this task the pilot groups to be used during the pilot implementation will be identified.

**Schedule:** June-July 2013

**Deliverables:** Stakeholder needs analysis workshop and interviews; CMMS Needs Assessment Technical Memorandum as draft and final; Work Breakdown Structure identifying tasks involved to complete the project.

**City Participation:** Provide existing documentation including a Stakeholder Register prior to workshop, participation in Needs Assessment workshop; work with the Consultant to design and verify the WBS; be available to discuss follow-up issues on an ad-hoc basis; review and provide comments for the draft CMMS Needs Assessment Technical Memorandum and WBS.

#### Task 1.3 Business Processes – Review and Optimize to Best Practices

##### Objective

Refine and improve existing Cityworks business processes, workflows and update existing business processes to meet the defined user requirements in Task 1.2.

##### Approach

Consultant will hold workshops with City staff to review existing CMMS business process and workflows currently used in the City. Consultant will update the City's business process to support and sustain the City's asset management goals, performance metrics and reporting needs. Consultant will document

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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findings in a Business Process Technical Memorandum and produce updated workflows for City staff to use in creating system records in the upgraded CMMS.

**Schedule:** August 2013

**Deliverables:** Business process review workshops; documented existing City business process and workflows (up to eighteen business processes); documented new City business process and workflows; Business Process Technical Memorandum as draft and final.

**City Participation:** Participate in the business process review workshop; review existing business process documents and workflows prior to workshops; review new business process documents and workflows; and sign-off new business process document and workflows.

#### Task 1.4. System Configuration and Integration Design

##### Objective

Create the integration design and solution document.

##### Approach

Consultant and City will work together to define the technical components of the solution, including the CMMS configuration, GIS interfaces, all existing system integration interfaces, map products, and reports. The system integration design will include water, water conservation, sewer, and drainage field services in addition to other divisions serving as support staff such as the Engineering and Information Technology groups.

Results will be presented to the City via facilitated workshops that provide opportunities for feedback, providing additional input, and recommendations from key members of the City project team, subject matter experts, and stakeholders. The workshops will feature demonstrations of preliminary configurations in Task 1.5. (Task 1.4 and 1.5 will be performed concurrently) that show the CMMS components, GIS integration and existing auxiliary software.

A CMMS Configuration and Integration Design Report that documents the agreed-upon design will be created.

**Schedule:** September 2013

**Deliverables:** Draft and final CMMS Configuration and Integration Design Report and review workshops that includes configuration and integration design for water, water conservation, sewer, drainage, and engineering/IT support staff.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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**City Participation:** Review draft document; review and sign-off of CMMS Configuration and Integration Design Report.

### Task 1.5 Configuration and Integration

#### Objective

Configure and integrate all components for Cityworks Server AMS system.

#### Approach

A development environment will be established to facilitate configuration of the CMMS, integration of GIS data to ArcSDE server, and testing of the City's existing auxiliary software. These will be produced according to the needs assessment and design specifications documented in Tasks 1.1 through 1.4.

As the components are completed they will be tested to ensure that they meet the City's established specifications. Consultant will work with the City to provide a Test Plan that delineates the acceptance testing process. Successful completion of the software acceptance test is a prerequisite for final end user training and full deployment of the system. Any open issues that do not affect end user experience will be resolved prior to project closeout.

After the development of draft Test Plan, Consultant will develop a set of acceptance criteria for the Final Test Plan that will be used for system acceptance testing.

Consultant will participate and review each of the major system test activities to ensure compliance with the test plan and conformance with the acceptance criteria.

During this task the pilot implementation task requirements will be identified and documented. This will include the length of the pilot study and what constitutes the City's acceptance criteria. Training material will be created to reflect the upgraded Cityworks CMMS and all the integrated components of the system.

Once the system has been installed and configured, the City will review the configuration and provide consolidated comments on any issues identified. These will be reviewed with Consultant, prioritized, and resolved in order of importance.

**Schedule:** September – November 2013

**Deliverables:** Preliminary integrated CMMS solution; draft training material for pilot implementation; initial and final test plan; acceptance test criteria.

**City Participation:** Review and provide consolidated comments on the system implementation configuration, test plan and acceptance criteria; be available for technical questions as needed.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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### Task 1.6 System Testing

#### Objective

Develop system test plan, acceptance criteria, manage the testing program, and witness the performance testing program.

#### Approach

Consultant will develop a System Test Plan in conjunction with City staff for Cityworks Server AMS and integration with existing system interfaces and ArcSDE. This task will assure the complete testing of the software from a functionality, performance, reporting, integration, and implementation perspective. Consultant will develop a set of acceptance criteria in conjunction with City staff for the Final Test Plan that will be used for system acceptance testing. Consultant will lead each of the major system test activities to ensure compliance with the test plan and conformance with the acceptance criteria.

**Schedule:** December 2013

#### **Deliverables:**

- System test acceptance criteria
- System test reviews and results
- Final Test Plan

**City Participation:** Assist with developing System Test Plan and acceptance criteria; review and acceptance of system testing results; sign off on Final Test Plan.

### Task 1.7 Server Configuration/Installation and System Upgrade Pilot Study

#### Objective

Configure and install the necessary server hardware to support the integrated solutions.

Plan and execute the Cityworks Server AMS pilot study. This pilot study will be used as a preliminary evaluation to test the system upgrade to ensure that it will work effectively and be accepted by project stakeholders. Information gathered from the pilot implementation will be applied to the full implementation to make sure that the production roll out works correctly and effectively.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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Approach

Consultant will assess and determine the necessary server hardware and software that is required to support the integrated solutions.

Once the specifications have been defined and the server is delivered (hardware will be provided by the City), Consultant will perform all necessary configuration to get the system up and running. This includes installation of application software and configuration sufficient to provide communication with all other interfaces (e.g. GIS, PeopleSoft, Siebel modules). It is assumed that no custom application development or program scripting will be necessary to accomplish this. Initial testing will be completed as part of the system test to be performed during the pilot study.

Once the solution is ready to be installed at the City, Consultant will produce a draft technical memorandum that describes the steps necessary to configure and install the server. It will identify the responsibilities of both Consultant and the City and the implementation schedule. Once approved by the City, implementation can begin. Notes will be taken during the system installation with the exact names, logins, and file paths that were utilized. Post installation, these notes can then be used to create the final version of the technical memorandum.

The identified pilot study users will be trained on the use of the newly upgraded Cityworks Server AMS and associated integration system that form the Field Services CMMS integrated system. The pilot implementation will include all components of the CMMS integrated system. Once City staff are fully trained the pilot implementation will be started. The results from the pilot implementation will be closely monitored and adjustments made to the system as required. The pilot study will run in parallel to the existing Cityworks ANYWHERE software until full system deployment is completed.

The Consultant will develop a pilot study plan and findings report. The pilot study plan will include the implementation approach and recommendations on running the newly upgraded system environment alongside the production system. The Consultant must identify the following criteria in the pilot implementation plan:

- Project deliverables that are candidates for the pilot study
- Objectives and stakeholders impacted by conducting the pilot study
- Tools and skills required to complete the pilot study successfully

**Schedule:** January-February 2014

**Deliverables:** Technical memorandum recommending the required server hardware and implementation plan, as draft and final.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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Pilot study implementation plan; pilot implementation; pilot implementation summary results draft and final technical memorandum

**City Participation:** Help identify existing hardware and approve required hardware. City will purchase the necessary hardware. Assist Consultant in executing the pilot study (assume four weeks duration); provide comments on the pilot system; provide IT expertise to assist in the software and hardware installation; participate in the training sessions; identify individuals who will be part of the pilot study and responsible for training future users; sign-off on final pilot implementation.

### Task 1.8 System-Wide Training and Roll Out

#### Objective

Full deployment of Cityworks Server AMS to all CMMS users and training and implementation plan for transitioning the project to the City.

#### Approach

Once the pilot implementation is completed and is accepted by the City, a full system deployment to all CMMS end users will be undertaken. A phased roll out approach will be planned and executed to ensure that the roll out can be managed successfully. Consultant will deliver the implementation plan to transition the project from the Consultant to the City focusing on these categories:

#### 1) Status

- a. Describe what the status of the project will be when it is ready to be transitioned into production.
- b. What documentation will be needed to ensure a smooth transition?
- c. What kind of training must be provided to ensure a smooth transition?

#### 2) Support

- a. Describe what support the City can expect from the Consultant project team during project transition.
- b. Describe the problem reporting/support requesting process that will be used including who from the City is authorized to place support calls.
- c. Describe the process for escalating support calls.

#### 3) Assessment

## Attachment 1 to Exhibit A

### City of Sacramento

### Azteca Cityworks Upgrade Project

#### Scope of Services

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- a. Describe how the performance of the project will be assessed including methodology, the person(s) responsible for performing the assessments, the timing of the assessments, and to whom and in what format the results should be reported.
- 4) Fine-Tuning
    - a. Describe how fine-tuning the project will be accomplished should it become necessary. Include Consultant and City contributions to fine-tuning and how long the City can expect the Consultant project team to be available for fine-tuning.
  - 5) Parallel Processing
    - a. Describe the strategy in running systems in parallel and how long the parallel system will need to be in place.
  - 6) Current System Shut Down
    - a. What conditions must exist in order to shut down the current system before fully transitioning to the newly upgraded system? When do we think those conditions will be in place?

Each area will be prioritized by the City for system roll out. This process will identify any data conflicts, gaps, or errors encountered. A detailed listing of these issues will be provided to the City. .

Staff will be fully trained on using the CMMS integrated system. Training material will be updated from the pilot implementation findings. Training will include a "Train the Trainer" workshop focused on educating selected City staff who will provide training to other system users in the future. Training will be conducted at the City facilities. It is assumed that the City will provide the necessary hardware needed for training.

**Schedule:** February-March 2014

**Deliverables:** Roll out phased CMMS implementation plan; support call contact sheet; training plan and final training materials.

**City Participation:** Provide requirements to Consultant for a smooth and successful project transition; Participate in the training sessions; sign off on the final implementation once it is up and running; take responsibility for the system once it has been accepted.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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Task 1.9 Project Closeout

March 2014

Objective

Verify project objectives is achieved, work is completed to requirements, and document lessons learned.

Approach

Consultant will meet with project team members and key stakeholders to assess the project's completion and success factors. Consultant will work with the City to identify any outstanding tasks and deliverables that may need further evaluation before the City accepts the project and deems it complete. The project post assessment task will consider and document findings for these key areas:

- 1) Schedule Review
  - a. Did we meet the deadline? If not, what were the reasons for the variance?
  - b. What could have been done differently?
  - c. What aspects of the scheduling worked well?
  
- 2) Scope Review
  - a. Did we accomplish all the project objectives?
  - b. Which objectives did we fail to meet, if any?
  - c. What were the reasons we failed to meet the above objectives?
  - d. What could have been done differently?
  - e. What aspects of scope management worked well?
  
- 3) Budget Review
  - a. Was the budget for the project met? If not, what were the reasons for the variance?
  - b. What could have been done differently?
  - c. What about the budget worked well?

**Schedule:** March 2014

**Deliverables:** Project closeout meeting with project sponsor, project team and key stakeholders; project closeout report

## Attachment 1 to Exhibit A

### City of Sacramento

### Azteca Cityworks Upgrade Project

### Scope of Services

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**City Participation:** Participate in project closeout meeting with Consultant; accept and sign off on project once the City finds all project tasks and deliverables are acceptable and meets the project objectives.

#### Task 1.10 Project Management

##### Objective

Ensure the project is successfully delivered within the City schedules and meet City's expectations.

##### Approach

Project management activities will be performed throughout this project to ensure that the scope, schedule, and budget are achieved, to provide adequate communication between Consultant and the City, and to ensure that the team is collaborating as efficiently as possible to meet the project goals.

An initial activity of the Project Management task is to develop the Project Management Plan. To ensure that projects meet or exceed their objectives, Consultant is required to produce a project management plan (PMP) for each project. The process of creating a PMP provides managers with guidelines and checklists to increase project success. Detailed project instructions and planning tools are specified in the PMP including project team organization, responsibilities, the work plan, progress evaluation, and change control. In addition, guidelines for ensuring quality assurance of project performance and deliverables are provided. The PMP is provided to all project participants, including Consultant, subcontractors, and the City, so that everyone clearly knows the project objectives, communication protocols, and each individual's project responsibilities. All projects receive extensive peer review by senior third-party experts.

Consultant's project manager, Brian Hoefer, will meet with the City's project manager regularly to provide project status reports and review project progress relative to goals. This will provide on-going communication between Consultant and the City, allowing opportunity for evaluating progress. Consultant's corporate tools to support project management allow its managers to communicate effectively, monitor work progress, and administer projects efficiently.

A key component to the success of this project is on-going formal and informal communication about the project between the City and the Consultant's project manager. Requirements and priorities may change after a project has started and more understanding of current conditions and user needs are identified. These need to be identified, evaluated, and discussed to determine project impact and trade-offs. The communication mechanisms that will be used for the project will be laid out and discussed at the start of the project. These mechanisms will be used throughout the project to communicate issues, track progress, identify and document decisions, and manage expectations.

These communication mechanisms may include scheduled status reports, project management meetings, informal updates, and conversation confirmation forms.

**Attachment 1 to Exhibit A**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**  
**Scope of Services**

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**Schedule:** June 2013 – March 2014

**Deliverables:** Project Management Plan; monthly project status reports (schedule, budget, and progress) (assume 8 months); monthly project management meeting with the City (assume eight 2-hour meetings).

**City Participation:** Provide dedicated project manager to be main counterpart and point of contact for the Consultant's project manager.

## EXHIBIT B

### PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

#### FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$275,000.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not

conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*City of Sacramento  
Department of Utilities  
5730 24<sup>th</sup> Street, Building 22  
Phone: 916-808-4079/Fax: 916-808-6293  
Attn: Elsie Fong  
Project #Z14003603*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

**Attachment 1 to Exhibit B**  
**City of Sacramento**  
**Azteca Cityworks Upgrade Project**

**Price Estimate and Budget**

	GeoIT Labor Classification*				Hour Estimate	Estimated Expenses	Total Estimate
	G7 \$140/hr	G6 \$125/hr	G4 \$95/hr	G3 \$85/hr			
Task 1.1 to 1.4 System Needs Analysis and Design	70	144	8	52	274	\$ 3,800.00	\$ 36,780.00
Task 1.5 & 1.6 Configuration, Integration, and System Testing	112	214	128	290	744	\$ 3,600.00	\$ 82,840.00
Task 1.7 Server Installation and System Upgrade Pilot Study	120	50	240	174	584	\$ 5,300.00	\$ 65,940.00
Task 1.8 System-Wide Training and Roll Out	122	44	144	75	385	\$ 6,400.00	\$ 49,035.00
Task 1.9 & 1.10 Project Management and Closeout	20	165	10	10	205	\$ 900.00	\$ 26,125.00
						<b>SUBTOTAL</b>	<b>\$ 260,720.00</b>
						Contingency Budget	\$ 14,280.00
						<b>TOTAL NOT-TO-EXCEED BUDGET</b>	<b>\$ 275,000.00</b>
* Expected personnel working in each labor classification are as follows:							
	G7	Senior Consultant / Application or Software Architect					
		<ul style="list-style-type: none"> <li>• Steve Schaffer</li> <li>• Ramon Gallegos</li> </ul>					
	G6	Project Manager / Application Developer / Senior Specialist					
		<ul style="list-style-type: none"> <li>• Brian Hoefer</li> </ul>					
	G4	Specialist / Consultant / Programmer					
		<ul style="list-style-type: none"> <li>• Ariana Gonzales</li> </ul>					
	G3	Database Analyst / Technical Writer					
		<ul style="list-style-type: none"> <li>• Sharlene Rakestraw</li> <li>• Marcus Harner</li> </ul>					

**Attachment 1 to Exhibit B**

**City of Sacramento**

**Azteca Cityworks Upgrade Project**

**Rate Schedule**

		
<b>2013 RATE SCHEDULE</b>		
<b>ID</b>	<b>Labor Classification</b>	<b>Rate</b>
G1	Clerical / Office Support	\$55.00 / hr
G2	Technician	\$70.00 / hr
G3	Database Analyst / Technical Writer	\$85.00 / hr
G4	Specialist / Consultant / Programmer	\$95.00 / hr
G5	Senior Analyst / Database Administrator	\$110.00 / hr
G6	Project Manager / Application Developer / Senior Specialist	\$125.00 / hr
G7	Senior Consultant / Application or Software Architect	\$140.00 / hr
G8	System Architect / Senior Project Manager	\$165.00 / hr
<b>ID</b>	<b>Material &amp; Travel Expenses</b>	<b>Rate</b>
M1	Letter or legal black & white copy or print	\$0.10 / page
M2	Letter or legal color copy or print	\$0.20 / page
M3	"B" size (11" x 17") black & white copy or print	\$0.50 / page
M4	"B" size (11" x 17") color print on standard paper	\$2.00 / page
M5	"C" size (18" x 24") color print on standard paper	\$2.50 / page
M6	"D" size (24" x 26") color print on standard paper	\$3.00 / page
M7	"E" size (36 x 48") color print on standard paper	\$4.50 / page
M8	Odd size prints	\$0.50 / sq.ft.
M9	Vehicle mileage (current standard IRS mileage rate)	\$0.565 / mile
ODCs: All other material and travel costs billed as direct reimbursement plus 10%		



## EXHIBIT D

### PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

#### GENERAL PROVISIONS

1. **Independent Contractor.**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

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

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

data, and other vital information (hereafter collectively referred to as “City Information”) that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

**7. CONTRACTOR Information.**

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

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

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

**9. Term; Suspension; Termination.**

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

by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

**10. Indemnity.**

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

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

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

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

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

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

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

B. Additional Insured Coverage

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

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

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

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

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

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

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

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

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

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

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and

shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

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

## **EXHIBIT E**

### **REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

#### **INTRODUCTION**

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

#### **APPLICATION**

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

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

#### **DEFINITIONS**

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

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

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

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

“Contractor” means any person or persons, firm, partnership, 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 directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

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

# Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

**You May . . .**

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

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

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

## Attachment B



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

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

The included employee benefits are:

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

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

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

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

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

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

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

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