

Meeting Date: 7/30/2013

Report Type: Consent

Report ID: 2013-00553

Title: Contract: Aluminum Chlorohydrate (ACH) for One-Year Test Study at Sacramento Water Treatment Plant (Two-Thirds Vote Required)

Location: Citywide

Issue: The Department of Utilities has an ongoing need for Aluminum Chlorohydrate (ACH) at the Sacramento River Water Treatment Plant.

Recommendation: Pass 1) a Resolution suspending competitive bidding, in the best interests of the City, for the purchase of aluminum chlorohydrate (ACH) for a one-year test study, and 2) a Motion awarding a contract for the purchase of aluminum chlorohydrate (ACH) to NTU Technologies, Inc., for a one year period beginning July 1, 2013 and ending June 30, 2014 in an amount not to exceed \$850,000.

Contact: Michael Malone, Field Services Manager, (916) 808-6226; Dave Phillips, Water & Sewer Superintendent Operations, (916) 808-5652, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Plant Svcs O&M Support

Dept ID: 14001221

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Exhibit A (Sacramento County NTU Contract)

5-Exhibit B (NPSA NTU Technologies)

City Attorney Review

Approved as to Form

Joe Robinson

7/22/2013 10:44:40 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

7/10/2013 5:04:06 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 7/17/2013 1:21:17 PM

Description/Analysis

Issue: The Department of Utilities is conducting a pilot project to improve water treatment process efficiencies and reduce overall process costs.

Policy Considerations: Under City Code Section 3.56.230, the City Council may suspend competitive bidding for a supply purchase if the City Council determines, on a two-thirds vote, that it is in the City's best interests to do so. Staff believes it is in the City's best interest to suspend competitive bidding for the purchase of aluminum chlorohydrate (ACH) from NTU Technologies, Inc. to conduct the one-year trial to ensure supply quality continuity and avoid the trial results becoming jeopardized and/or invalidated.

Economic Impacts: Not Applicable

Environmental Considerations: The Community Development Department, Environmental Planning Services has reviewed the project and has determined the project is exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3). 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: The use of ACH in lieu of Alum has been shown to reduce the amount of chemicals used for the drinking water treatment process and decrease the byproducts produced by the process.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: DOU has an ongoing need to purchase ACH for its inventory to ensure continuation and completion of the one-year chemical trial mandated by the State of California Department of Health. Staff recommends continued purchase of ACH from NTU Technologies, Inc. to avoid invalidating the chemical trial results. Staff has reviewed the contract pricing and determined that it is fair and competitive.

Financial Considerations: The proposed contract has a one-year term, for a total amount not to exceed \$850,000. Sufficient funding for the one-year term is available in the Department of Utilities, Plant Services Division FY2013/14 operating budget.

Emerging Small Business Development (ESBD): NTU Technologies, Inc. is not certified as an emerging or small business enterprise firm.

Background

The Department of Utilities (DOU) operates two water treatment plants, the Sacramento River Water Treatment Plant (SRWTP) on the Sacramento River and the E.A. Fairbairn Water Treatment Plant (EAFWTP) on the American River. During the water treatment process, liquid aluminum sulfate (alum) is used to separate sediment particles from the water. Another chemical, aluminum chlorohydrate (ACH), is also available for this same process. DOU staff research has found that replacing the Alum with ACH may improve process efficiencies and greatly reduce overall process costs. Staff estimates a possible \$500,000 to \$1,000,000 savings per year by using the ACH instead of alum in the water treatment process.

Chemicals used in the Process

Quicklime - 15% reduction of product used per year

ACH –\$450,000 savings per year on aluminum based chemical as less ACH than Alum is used

Byproducts of the Process

Solids/Sludge – 60% reduction of product produced per year. Savings will occur due to decreased processing labor, trucking costs, and landfill costs.

With the permission of the State of California, Department of Public Health, the SRWTP began a chemical trial in May 2013 to determine if the alum can be successfully replaced with ACH. The trial was planned for a three-week duration during May and June 2013. Several vendors were asked to send samples of ACH for performance testing. NTU Technologies, Inc. ProPac 9600 worked best with the water chemistry of SRWTP and was selected for use in the trial run. Sacramento County currently has open item contract #WA00029728 with NTU Technologies, Inc. for ACH that DOU was able to piggyback on and create a purchase order in the amount of \$92,000 for the trial run in FY 2013/2014. Trial results over the three-week period were encouraging with a reduction in the amount of chemicals used and a reduction in the byproducts produced from the process.

The State of California, Department of Public Health, that is overseeing the trial, has now mandated that the trial be extended from three weeks to a full-year period. In order to keep the trial results from becoming jeopardized and/or invalidated, DOU needs to continue purchasing ACH from NTU Technologies, Inc. Staff recommends the suspension of competitive bidding for the trial use period ending June 30, 2014.

County of Sacramento contract #WA00029728 unit pricing for ProPac 9600 is \$0.26 per pound delivered for a full truck load (minimum 4,000 gallons), \$0.30 per pound delivered for a less than full truck load, and \$0.49 per pound delivered for a 275 gallon tote. NTU Technologies has agreed to extend this same pricing to DOU for the one-year trial period ending June 30, 2014. The County of Sacramento contract with NTU will expire on November 14, 2013, which will not be sufficient to cover estimated purchases over the City's one-year trial term, which is why staff is recommending the suspension of competitive bidding to award the one-year contract to NTU

Technologies, Inc. at the same pricing. Staff estimates and experience during the trial indicates that DOU will require approximately one full truck load per week, at a cost of \$14,500 per load, which includes freight charges, for a total of \$754,000 per year. DOU is requesting a not-to-exceed amount of \$850,000, which includes one full load per week and a buffer of approximately six extra full loads for the one-year term.

Once the trial period ends, any subsequent contracts for ACH will be bid per all applicable City requirements.

RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

SUSPENDING COMPETITIVE BIDDING FOR ALUMINUM CHLOROHYDRATE (ACH) FOR ONE-YEAR TEST STUDY AT SACRAMENTO RIVER WATER TREATMENT PLANT

BACKGROUND

- A. The Department of Utilities (DOU) is researching and proposing to use aluminum chlorohydrate (ACH) as a substitute for liquid aluminum sulfate (Alum) in the drinking water treatment process. The use of ACH in lieu of Alum may generate significant cost savings due to the reduction of several chemicals used and byproducts produced during the process.
- B. Under the direction and supervision of the State of California Department of Health Services, DOU performed a three-week chemical assessment study at the Sacramento River Treatment Plant to determine the effectiveness of the ACH. After the three week ACH trial test, the Department of Health Services mandated that the ACH testing should continue for a full year.
- C. Prior to performing the study, ACH samples were submitted by two suppliers for jar testing. NTU Technologies, Inc. had a higher quality sample which produced better results during the water treatment process. For this reason, NTU Technologies, Inc. was selected to supply ACH for the three week trial. The purchase amount for the three-week trial was less than the \$100,000 threshold for formal competitive bidding.
- D. Under the City Charter and City Code, the City Council can suspend competitive bidding when it determines, on a 2/3 vote, that it is in the City's best interests to do so.
- E. It is in the best interests of the City to suspend competitive bidding for the purchase of ACH for the one year test study so that City staff can continue the ongoing test study using the same supplier to ensure consistent specifications and quality of the ACH. Switching the supplier mid-study will jeopardize the information already collected and could invalidate the study.

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

- Section 1. Competitive bidding is suspended for the purchase of aluminum chlorohydrate (ACH) from NTU Technologies, Inc., in the best interests of the City.

County of Sacramento
Open Item Contract

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Contract and Purchasing
Services Division
9660 Ecology Ln.
Sacramento, CA 95827
(916) 876-6360

Open Item Contract WA00029728 / 11/15/2012

This number must appear on all correspondence to the Purchasing Division.

Contract number/date
WA00029728 / 11/15/2012

Issuing Officer/Telephone
Lee, Tom/916 876-6373

Signature: Tom Lee

Your Vendor number with us
633335

NTU TECHNOLOGIES INC
P O BOX 55048
SHERMAN OAKS CA 91413

Vendors Contact Person: SKIP WRIGHT
Vendors Phone Number: 818-788-8802

Contract Period
Valid from: 11/15/2012
Valid to: 11/14/2013

F.O.B. Dest., Freight Prepaid
Payment Terms: Due in 30 Days
Contractual maximum value: 200,000.00

You are hereby notified that the goods and/or services listed have been awarded to you subject to terms and conditions referenced and to the general conditions listed on the reverse.

Before supplying any goods or services to the County, the vendor must obtain a CSO (Contract Shipping Order) number from the ordering department. A CSO is an authorized release (Purchase Order) against the contract and shall be provided in written form. "Verbal" orders are not acceptable. For a CSO to be considered valid, it must be within the scope of this contract and be consistent with its pricing, terms and conditions. The CSO number must be referenced on all documents related to the order (packing slips, invoices, etc.). Failure to obtain a CSO and reference its number may result in the delay or non-payment of the invoice.

Attention: John "Skip" Wright, President
Susan Vaziri, VP, susan@ntutechnologies.com
Christine Wright, CFO
office(818) 788-8802, fax (818) 788-8809

Skip's cell (707) 592-3529, skip@ntutechnologies.com

****Open-item Contract Award****

Material Group: Aluminum Chlorohydrate Pro Pac 9600
(Truck Deliveries)

Reference: Request for Bid No. 7937

Please list Eric Houston as the Agency contact for the pre-check field meetings and chemical deliveries at the Vineyard Surface Water Treatment Plant (VSWTP). Eric can be reached at (916) 875-4290, cell (916) 591-0405, or by e-mail at houstone@saccounty.net.

Estimated Quantities: Quantities (or expenditures) shown are merely annual estimates. The County does not guarantee to purchase a minimum quantity, or to purchase any remaining products that Contractor may have acquired in support of this Agreement.

F.o.b. Point: The f.o.b. point shall be f.o.b. destination, freight prepaid. Delivery site will be to the Sacramento County Water Agency (SCWA) Vineyard Surface Water Treatment Plant (VSWTP), 10151 Florin Rd, Sacramento CA 95829.

Health and Safety: Contractor shall plan and conduct work in a manner that will safeguard all persons from injury and shall take all precautions as required by California Department of Industrial Relations and Cal-OSHA (California-Occupational Safety and Health Administration).

Delivery Method: For safety reasons, deliveries of chemical products under this Agreement shall always be made with person(s), who have undergone extensive training in the area of safety, i.e., chemical handling, equipment condition, etc.

Deliveries: Deliveries shall be made within 1-3 working days from date and time of order. Contractor will call 24 hours prior to delivery with time of delivery. If contractor does not make the required delivery time within a One hour (1) period on three(3) or more occasions this will provide grounds for termination of contract. REFERENCE: Termination and Non-appropriation: B. County may terminate this Agreement for cause immediately upon giving written notice to Contractor should Contractor materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

Orders: Orders will be made on an "as needed" basis during the contract period. See Contract Shipping Order (CSO) instructions above.

Invoices: Prepare invoices in duplicate; SacCounty requires an original and a copy for each separate invoicing. For orders placed by the Department of Water Resources Department/ Sacramento County Water Agency, send invoices to:

MSA Department of Water Resources
County of Sacramento
Attention: Accounts Payable
827 7th St Ste 301
Sacramento CA 95814-2406

Each invoice shall contain, at a minimum, the following information: invoice number and date; vendor remittance address; "bill-to" and "ship-to" addresses; contract number; contract shipping order number (CSO#); item description; unit prices and extensions; applicable sales tax; pesticide tax, and, an invoice total.

Packing Slip: Each delivery shall be accompanied with a legible packing slip, showing quantities, item descriptions, and a CSO#.

Contract Period: The initial term shall be from 11/15/2012 to 11/14/2013. The County reserves the right to extend the contract period for two additional terms, beginning 11/15/2013 and 11/15/2014. Such extension(s) will be at the County's option, subjected to the same terms, conditions, favorable prices, and agreement between the vendor and the County.

Hazardous Materials: All materials subjected to the requirements of the State of California Code of Regulations, Title 8, Article 110, Section 5194, must be identified.

Material Safety Data Sheet (MSDS): All hazardous materials must be accompanied by a MSDS at the time of delivery.

Protection of Property and Environment: Contractor shall take every precaution to protect all public and private property during the performance of this Agreement. Any damage to existing facility or property caused by Contractor's personnel or equipment shall or will be promptly repaired to the condition existing before the damage or be replaced. All costs for such repairs or replacements shall be solely the responsibility of Contractor.

Contractor shall be environmentally responsible. Any spills or releases of hazardous wastes occurring while under Contractors control and possession, which are not caused by the negligence or willful misconduct of County, shall be solely the responsibility of Contractor.

Unrestricted quantities: The County is not limited to purchase all of its requirements from this agreement.

Changes: The County shall retain the right to add, delete or change line items under the contract and may do so upon giving written notice to the vendor. If such changes cause an increase or a reduction to the line item costs, the adjusted prices shall be incorporated into the contract upon agreement between the vendor and the County.

Independent Contractor: It is understood and agreed that contractor (including contractor's employees) is an independent contractor and that no relationship of employee-employer exist between the parties hereto.

Indemnification: Contractor shall indemnify, defend and hold harmless County, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder.

Reference: RFB No.7937 and the contractor's response is incorporated herein by reference and made a part of this contract. For complete specifications, terms and conditions refer to RFB No. 7937. In the event of conflicting provisions, the County's shall prevail unless addressed in writing beforehand.

Interest and Late Charges: In the State of California, government agencies are not allowed to pay excess interest and late charges. Pursuant to Government Code Section 926.10, interest or late charges shall not exceed six percent per annum. Such charges commence the 61st day from the receipt date of the original undisputed invoice.

Annual Report: It shall be agreed that vendor will track the type and quantity of items purchased by the county departments during the contract period or be willing to work with the issuing officer indicated above in developing an "annual estimated usage report."

Termination and Non-appropriation:

- A. County may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. County may terminate this Agreement for cause immediately upon giving written notice to Contractor should Contractor materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. County may terminate or amend this Agreement immediately upon giving written notice to Contractor, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in County's

yearly proposed and/or final budget are not appropriated by County for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by County as a result of mid-year budget reductions.

- D. If this Agreement is terminated under paragraph A or C above, Contractor shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, Contractor shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of Contractor covered by this Agreement, less payments of compensation previously made. In no event, however, shall County pay Contractor an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of termination.
- E. Contractor shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that Contractor can legally cancel.

Note: Before starting any work, vendor must first submit a certificate of insurance and a separate endorsement naming Sacramento County, its officers, directors, officials, employees, and volunteers as additional insureds and a separate endorsement for the Workers' Compensation Waiver of Subrogation - Endorsement #2570 if it is acquired from the California State Compensation Insurance Fund - to the issuing officer/certificate holder as shown below.

Actual certificate(s) of insurance shall be submitted within fourteen (14) days from date of award or renewal notice, unless it is already on-file with the issuing officer.

Certificate holder shall be shown as:

Sacramento County
c/o DGS Contract & Purchasing Services
Attention: Tom Lee
9660 Ecology Ln
Sacramento CA 95827-3815

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting Contractor's indemnification, Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives or employees. County shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the County Risk

Manager, insurance provisions in these requirements do not provide adequate protection for County and for members of the public, County may require Contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection. County's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

Verification of Coverage

Contractor shall furnish the County with certificates evidencing coverage required below. Copies of required endorsements must be attached to provided certificates. The County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected. All certificates or evidences of self-insurance are to be received and approved by the County before performance commences. The County reserves the right to require that Contractor provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the County Risk Manager.
2. Automobile Liability: Insurance Services Office's Commercial Automobile Liability coverage form CA 000.
 - a. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
3. Workers' Compensation: Statutory requirements of the State of California and Employer's Liability Insurance.
4. Umbrella or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

5. Environmental Impairment (Pollution) Liability coverage including bodily injury & property damage.

Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$5,000,000
Products Comp/Op Aggregate:	\$5,000,000
Personal & Adv. Injury:	\$5,000,000
Each Occurrence:	\$5,000,000
Fire Damage:	\$ 100,000

Building Trades Contractors and Contractors engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

2. Automobile Liability:
 - a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$5,000,000 Combined Single Limit.
3. Workers' Compensation: Statutory.
4. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
5. Environmental Impairment (Pollution) Liability coverage in the minimum amount of \$1,000,000 CSL bodily injury & property damage each occurrence and \$1,000,000 aggregate, including clean-up costs.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared to the County.

Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

All Policies:

1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with

insurers with a current A.M. Best's rating of no less than A-:VII. The County Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the County and the general public are adequately protected.

2. MAINTENANCE OF INSURANCE COVERAGE: The Contractor shall maintain all insurance coverages in place at all times and provide the County with evidence of each policy's renewal ten (10) days in advance of its anniversary date. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' written notice for cancellation or sixty (60) days' written notice for non-renewal has been given to the County. For non-payment of premium 10 days prior written notice of cancellation is required.

Commercial General Liability and/or Commercial Automobile Liability:

1. ADDITIONAL INSURED STATUS: The County, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no endorsed limitations on the scope of protection afforded to the County, its officers, directors, officials, employees, or volunteers.
2. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
3. PRIMARY INSURANCE: For any claims related to this agreement, the Contractor's insurance coverage shall be endorsed to be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, directors, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
4. SEVERABILITY OF INTEREST: The 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.
5. SUBCONTRACTORS: Contractor shall be responsible for the acts and omissions of all its subcontractors and additional

insured endorsements as provided by Contractor's subcontractor.

Workers' Compensation:

WORKERS' COMPENSATION WAIVER OF SUBROGATION: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by the Contractor.

Property:

COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION: Any Course of Construction (COC) policies maintained by the Contractor in performance of the Agreement shall contain the following provisions:

1. The County shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the County.

INLAND MARINE WAIVER OF SUBROGATION: Any Inland Marine insurance policies maintained by the Contractor in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against the County.

Notification of Claim

If any claim for damages is filed with Contractor or if any lawsuit is instituted against Contractor, that arise out of or are in any way connected with Contractor's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect County, Contractor shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

Item	Tgt. qty.	Unit Description	Price / Unit	Unit of Measure	Extended Value
00010	200,000	Each Aluminum Chlorohydrate (ACH) ProPac 9600	1.00	1 EA	200,000.00

NSF Certified

Price Schedule:

Product	Container	Price	Order Quantity
Pro Pac 9600	Bulk Tank Truck	\$0.26/lb/delivered	Full Truck Load (4,000 gallons)
Pro Pac 9600	Bulk Tank Truck	\$0.30/lb/delivered	Less Than Full Truck Load
Pro Pac 9600	275-gallon Totes	\$0.49/lb/delivered	Any Quantity

Availabililty: 3-5 business days for Bulk Tank Truck
5 business day for 275-gallon Totes

Pro Pac 9600 MSDS: It is attached electronically and to the hardcopy of the contract award.

The delivery requirements will be bulk delivery at 50,000 lbs per delivery which is usually in the 4600-gallon range. The delivery instructions will be the same as all other chemical contracts one day notice before delivery. All chemical deliveries use the Knox Rd Entrance. Delivery hours are Mon-Fri 0700-1500.

The attached Pro Pac 9600 MSDS contains the specifications, which the ACH chemical from NTU Technologies.

Distribution:

- 87-003 Dave Underwood
- 87-003 Keith Hall
- 87-003 Eric Houston
- 87-003 Mark Sanders
- 87-003 Randy Lightle
- 01-301 Barbara Patrick
- 01-301 Pamela Webb-Miles
- 01-301 Bob Olah

PURCHASE ORDER/CONTRACT GENERAL CONDITIONS

1. **BID/QUOTE/PROPOSAL/GENERAL CONDITIONS:** All of the terms and conditions of the bid, quote, or proposal against which this purchase document is applied, are hereby incorporated.
2. **SALES TAX NOT INCLUDED:** Unless otherwise definitely specified, the unit prices do not include California sales and use tax or Sacramento County sales and use tax.
3. **CASH DISCOUNTS:** In connection with any cash discount specified on this quote, time will be computed from the date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received in the County Auditors Office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the County warrant or check.
4. **AMERICANS WITH DISABILITIES ACT:** As a condition of accepting a purchase order from the County of Sacramento, the vendor certifies that their business entity is in compliance with the Americans With Disabilities Act of 1990, as amended. Failure to certify shall prohibit the award of a purchase order to the vendor.
5. **HOLD HARMLESS:** The vendor shall hold the County of Sacramento, its officers, agents, servants and employees harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this order, and agrees to defend, at his own expense, any and all actions brought against the County of Sacramento or himself because of the unauthorized use of such articles.
6. **DEFAULT BY VENDOR:** In case of default by vendor, the County of Sacramento may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the County of Sacramento. Prices paid by the County shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.
7. **RIGHT TO AUDIT:** The County of Sacramento reserves the right to verify, by examination of vendors records, all invoiced amounts when firm prices are not set forth in the purchase agreement.
8. **ASSIGNMENT:** (a) This award is not assignable by contractor either in whole or in part, without the prior written approval of the Purchasing Agent of the County of Sacramento. (b) In submitting a quote to a public purchasing body, the quoter offers and agrees that if the quote is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) the Cartwright Act (Chapter 2 [commencing with Section 16700] of part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, materials, or services by the quoter for sale to the purchasing body pursuant to the quote. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the quoter.
9. **APPLICABILITY TO HEIRS:** Time is of the essence of each and all the provisions of this agreement, and, subject to the limitations of Paragraph 8, the provisions of this agreement shall extend to and be binding upon and inure to the benefits of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.
10. **F.E.T. EXEMPTION:** Sacramento County is exempted from payment of Federal Excise Tax. No federal tax shall be included in price.
11. **CHARGES NOT INCLUDED ON FACE NOT ACCEPTABLE:** No charge will be accepted for packing, boxing, or cartage, except as specified in the Notice of Award. Freight collect shipments will not be accepted. Merchandise will not be accepted if payment is to be made at the time of delivery.
12. **TITLE:** Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by seller to buyer shall pass to the buyer upon buyers inspection and acceptance of such items at buyers building.
13. **CHANGES WITHOUT NOTICE PROHIBITED:** No changes in price, quantity or merchandise will be recognized by the County of Sacramento without written notice of acceptance thereof prior to shipment.
14. **ALL UNDERSTANDINGS IN WRITING:** It is mutually understood and agreed that no alteration or variation of terms of this award shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.
15. **FORCE MAJEURE:** The vendor will not be held liable for failure or delay in the fulfillment of conditions of purchase order/contract if hindered or prevented by fire, strikes, or Acts of God.
16. **INVOICING:** Upon submission of itemized invoices, in duplicate, payment shall be made of the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Payment on partial deliveries may be made whenever amounts due so warrant or when requested by the vendor and approved by the Purchasing Agent.
17. **SPECIAL CONDITIONS:** Buyers standard terms and conditions shall govern any contract awarded. If, after award of contract, vendor provides additional terms or conditions, they shall be considered void. To the extent not otherwise stated in the contract, the California Commercial code shall apply.
18. **YEAR 2000 WARRANTY AND INDEMNITY:** Vendor agrees that it is Vendors responsibility to ensure that all products furnished pursuant to this Agreement are and will continue to be Year 2000 compliant. Vendor further agrees that any hardware, software, and/or embedded chip devices used by Vendor in the performance of services under this Agreement, or contained within products furnished by Vendor under this Agreement, other than those owned or provided by County, shall accurately process without error date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, and leap year calculations. Vendors indemnification obligations to County under this Agreement shall apply to claims, liability, loss, injury, or damage resulting from the failure of any such hardware, software, and/or embedded chip devices to perform in compliance with this standard. Nothing in this warranty shall be construed to limit any rights or remedies otherwise available to the County under this Agreement. This warranty shall survive beyond the termination or expiration of this Agreement.
19. **CHILD, FAMILY, AND SPOUSAL SUPPORT:** Contractor hereby certifies that: (a) The following information has been provided to the Sacramento County Child Support Department and/or the District Attorney for each of Contractors Principal Owners (any individual owning 25% or more in Contractor entity) who is subject to a court-ordered child, family or spousal support order: (1) name, title, last known residence address and social security number; (2) all earnings paid to or payable to such principal owner pursuant to any contract with Sacramento County; and (3) whether dependent health insurance coverage is available to or provided to such Principal Owner. (b) Contractors Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, or, in the alternative, has made a good faith effort to become current or arrange a payment schedule with the Child Support Department, District Attorney or the court. (c) Contractor has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees. (d) Contractor has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance. **NOTE:** Failure to comply with state and federal reporting requirements regarding Contractors employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under any contract with the County. Failure to cure such default within 90 days of notice by the County shall be grounds for termination of contract.

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 supplies 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 scope of services 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 E. 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

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

ATTEST:

City Clerk

APPROVED TO AS FORM:

City Attorney

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

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

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: NTU Technologies, Inc.

Address: P.O. Box 55048, Sherman Oaks, CA 91413

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

SUPPLIES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Dan Houston, Supervising Plant Operator
301 Water Street, Sacramento, CA 95814
Phone (916) 808-7082 Fax (916) 808-4969 E-mail: dhouston@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:

*John "Skip" Wright, President
NTU Technologies, Inc.
P.O. Box 55048, Sherman Oaks, CA 91413
Phone (707) 592-3529 E-mail: skip@ntutechnologies.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. Scope of Services.

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

3. Time of Performance. The supplies described herein shall be provided during a one year period beginning July 1, 2013 and ending June 30, 2014.

Attachment 1 to Exhibit A

The Aluminum Chlorohydrate (ACH) shall be furnished in accordance with these specifications.

QUALITY

The Aluminum Chlorohydrate (ACH) shall be in accordance with AWWA Standard B408-10 or the latest revision. The manufacturer or supplier shall provide an affidavit that the Aluminum Chlorohydrate (ACH) furnished under this specification complies with all applicable requirements of AWWA Standard B408-10 at the time of delivery. Also, this material shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF Standard 60, Drinking Water Chemicals- Health Effects.

PRICING

The supplier shall provide Aluminum Chlorohydrate (ACH) ProPac 9600, NSF Certified at the following prices:

<u>Product</u>	<u>Container</u>	<u>Price</u>	<u>Order Qty</u>
ProPac 9600	Bulk Tank Truck	\$0.26/lb/delivered	Full Truck Load (4,000 gallons)
ProPac 9600	Bulk Tank Truck	\$0.30/lb/delivered	Less than Full Truck Load
ProPac 9600	275 Gallon Tote	\$0.49/lb/delivered	Any Quantity

MSDS, ANALYSIS DATA, AND CERTIFICATION

Supplier shall supply proof with each shipment that the proposed product has been certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF 60, Drinking Water Treatment Chemicals – Health Effects.

SAMPLES

Prior to the award of the contract, the City may require that samples be submitted for evaluation and/or testing. The samples provided by the Contractor shall represent the exact items and/or products bid and to be supplied. Samples must be received within 5 working days of the request for pre-award samples. Failure to satisfy any of the City’s requirements and/or specifications may result in the rejection of the bid.

During the contract period, the City may perform selected inspections and tests to verify that the items and/or products supplied meet the requirements of this specification. Sampling shall consist of equal portions being taken at five equally spaced time intervals during the unloading of the tank truck or railroad car.

ESTIMATED QUANTITIES

Quantities (or expenditures) shown are merely annual estimates. The quantity specified is based upon current known requirements and is subject to increase or decrease at the same terms and conditions. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period. The City of Sacramento does not guarantee to purchase minimum quantity, or to purchase any remaining products that Contractor may have acquired in support of this Agreement.

ORDERS

Orders will be made on an "as needed" basis during the contract period.

DELIVERY

Deliveries shall be made within three (3) working days after receipt of orders at any time during the contract period. Delivery shall be made in 4,000 gallon or larger tank trucks or trailers. Deliveries shall be made Monday through Friday, between 7:00 a.m. and 2:00 p.m., during which time the City will provide personnel to unload the ACH from tank truck to receiving storage. Unless otherwise directed, failure to observe this time constraint may result in a delay of the unloading to the following day, at no additional cost to the City. The contractor shall observe the transfer filling operation at the filter plant and shall be responsible for minimizing any spillage due to such operation.

DELIVERY LOCATIONS AND CONTACTS

**Sacramento River Water Treatment Plant
301 Water Street, Sacramento, CA 95811**

Contacts:

Control Room Fax (916) 808-4994

**Dan Houston, Supervising Plant Operator
Office (916) 808-7082 Cell (916) 947-9045
Email dhouston@cityofsacramento.org**

**Richard Dare, Sr. Plant Operator
Phone (916) 808-4961
Email rdare@cityofsacramento.org**

**Rod Frizzell, Supervising Plant Operator
Office (916) 808-5165 Cell (916) 712-8231
Email rfrizzell@cityofsacramento.org**

DELIVERY DOCUMENTATION AND PROTOCOL

The City of Sacramento delivery sites listed require a fax and email from the Aluminum Chlorohydrate (ACH) supplier the day of delivery prior to arrival. Information listed below shall be emailed and faxed to the delivery facility contacts listed below prior to delivery. The fax and email must contain the following information:

1. Security Information Sheet (Must include the following)
 - Delivery Location
 - Driver Information
 - Estimated Time of Arrival
 - Bill of Lading Number
 - Truck number
 - License number
 - Seal Numbers
2. Driver Identification with photo
3. Affidavit of Compliance / Certificate of analysis that will include the following information:
 - Percent Al₂O₃
 - Specific Gravity
 - pH
 - Free Acid Content
 - Free Alumina
 - Suspended Matter
 - Vendor Lot Number
 - Outlet Seal Number
 - Dome Seal Number
4. Washout Certificate or “last Contained” notation on CoA /Affidavit of Compliance.
5. Weight Certificate.
6. Product Tank Identification and Washout Checklist.*

* Note: This requirement does NOT need to be emailed or faxed prior to delivery, but needs to be completed by the driver and suppliers facility personnel.

Upon arrival drivers will present the above information for verification by City of Sacramento Water Treatment Plant personnel. All seal numbers and locations must match those listed on the paperwork. All seals must be correct and intact at delivery or load will be rejected.

FREIGHT

All items are to be supplied F.O.B. Destination, prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

SALES TAX

Sales tax is not applicable as this product is used in the production and purification of potable water for resale, California Resale Permit Number SYKH98-021076.

EXHIBIT B

SUPPLIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A (hereafter the "Services"), shall not exceed the total sum of \$850,000.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services in accordance with Attachment 1 to Exhibit A.
3. **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. 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
 - (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
 - C. 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:

Department of Utilities
1391 35th Avenue, Sacramento, CA 95822
Phone (916) 808-1464 Fax (916) 808-7955
Attn: Alaina Jordan

- 4. 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 contract supplement authorizing such Additional Services is approved by CITY in accordance with CITY's approval procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 5. 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, 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.
- 6. 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 6.

EXHIBIT C

SUPPLIES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall *[check one]*

Not furnish any facilities or equipment for this Agreement; or

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

Sacramento River Water Treatment Plant
301 Water Street, Sacramento, CA 95814

1. Materials storage for delivery of chemicals

**EXHIBIT D
SUPPLIES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this

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

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

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

7. CONTRACTOR Information.

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

designation of such information.

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

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

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

- (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services

provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

X 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:

X 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 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 Contract or 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 Contract or 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 directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

You May . . .

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

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

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

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

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

Discrimination and Retaliation Prohibited.

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

You May Also . . .

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