

Meeting Date: 2/11/2014

Report Type: Consent

Report ID: 2014-00079

Title: Contract: Replacement Sweeper (Two-Thirds Vote Required)

Location: Citywide

Issue: The Department of General Services, Fleet Management Division, has a customer requirement to purchase a replacement sweeper for the Department of General Services, Solid Waste Division.

Recommendation: 1) Pass a Resolution suspending competitive bidding in the best interests of the City for the purchase of a replacement sweeper from Municipal Maintenance Equipment, Inc. (MME); and 2) pass a Motion: a) authorizing the use of an existing sweeper (equipment number 11254) as partial payment of the purchase price of the sweeper, giving the City a credit of \$15,000 for the trade-in; and b) authorizing the City Manager or the City Manager's designee to execute the purchase of a replacement sweeper from MME in an amount not to exceed \$296,395.

Contact: Keith Leech, Fleet Manager, (916) 808-5869; Iseña Garcia, Program Specialist, (916) 808-1163, Department of General Services

Presenter: None

Department: General Services

Division: Fleet Management Admin

Dept ID: 13001311

Attachments:

1-Description/Analysis

2-Resolution

3-Agreement

City Attorney Review

Approved as to Form
Kourtney Burdick
2/5/2014 1:58:15 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
1/29/2014 4:34:39 PM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 2/3/2014 10:53:02 AM

Description/Analysis

Issue Detail: An existing Recycling & Solid Waste Division (RSW) sweeper (equipment number 11254) has been removed from service due to a fire caused by the rear motor. The Fleet Management Division has determined that the damage is too extensive to repair but that the unit still has some trade-in value. A demonstration model sweeper has been identified that can be purchased at a significant savings (as compared to a new model) as a replacement.

Policy Considerations: The recommendations in this report are in accordance with City Code Chapter 3.56 regarding the purchase of supplies and exceptions to competitive bidding.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): No environmental review is necessary because the recommendations in this report involve the purchase of equipment and are not considered to be a project in accordance with Section 15378(b)(2) of the CEQA guidelines.

Sustainability: The recommended purchase is consistent with the Fleet Sustainability Policy adopted by City Council on February 16, 2010 (Resolution No. 2010-083), and offers a cleaner burning alternative to diesel fuel with significantly lower fuel cost by utilizing compressed natural gas, which significantly reduces carbon emissions.

Commission/Committee Action: None

Rationale for Recommendation: The Department of General Services (DGS), Fleet Management Division, has a customer requirement to purchase a replacement sweeper for the DGS, Recycling & Solid Waste Division. An existing RSW sweeper (equipment number 11254) has been removed from service due to a fire caused by the rear motor. The Fleet Management Division has determined that the damage is too extensive to repair but that the unit still has some trade-in value. A demonstration model sweeper has been identified that can be purchased at a significant savings as a replacement.

Suspending competitive bidding is in the best interests of the City because Fleet Management staff has identified a replacement sweeper that will save the City \$45,490 while meeting the needs of the RSW. The recommended purchase is a unique situation because the specific sweeper to be purchased is a demonstration model that Municipal Maintenance Equipment, Inc. (MME) has agreed to sell to the City for \$287,000 plus tax. In addition, MME has agreed to accept the City's damaged sweeper as partial payment of the purchase price, and give the City a credit of \$15,000 for the trade-in. The total amount for the purchase, including tax and the trade-in credit, is \$296,395, which is substantially lower than the cost of a new model. The demonstration sweeper will be provided with the same full 12-month warranty that comes with a new model. The RSW

Division has agreed that this demonstration model meets its needs and represents a good value at the discounted price.

Financial Considerations: The recommended purchase in an amount not to exceed \$296,395 will be made from the DGS operating budget (Fleet Fund, Fund 6501) and charged to the DGS multi-year operating project (I06013142, Solid Waste Fund, Fund 6007) for replacement vehicles and equipment. Sufficient funding exists in both of these budgets to support the recommended purchase.

Local Business Enterprise (LBE): Municipal Maintenance Equipment, Inc. is certified as a local business enterprise.

RESOLUTION NO. 2014-

Adopted by the Sacramento City Council

February 11, 2014

PURCHASE REPLACEMENT SWEEPER (TWO-THIRDS VOTE REQUIRED)

BACKGROUND

- A. The Department of General Services, Fleet Management Division, has a customer requirement to purchase a replacement sweeper for the Department of General Services, Solid Waste Division.
- B. In accordance with City Code Section 3.56.230(C), the City Council may, by two-thirds vote, suspend competitive bidding for any purchase or contract in the best interests of the City.
- C. Suspending competitive bidding is in the best interests of the City for a replacement sweeper because Fleet Management staff has identified a replacement sweeper that will save the City \$45,490 (when compared to purchasing a new model) while meeting the needs of the Solid Waste Division. The recommended purchase is a unique situation because the specific sweeper to be purchased is a demonstration model that Municipal Maintenance Equipment, Inc. (MME) has agreed to sell to the City for \$287,000 plus tax. In addition, MME has agreed to accept the City's damaged sweeper as partial payment of the purchase price, and give the city a credit of \$15,000 for the trade-in. The total amount for the purchase, including tax and the trade-in value, is \$296,395, which is substantially lower than the cost of a new model. The demonstration sweeper will be provided with the same full 12-month warranty that comes with a new model. The Solid Waste Division has agreed that this demonstration model meets its needs and represents a good value at the discounted price.

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

- Section 1. In the best interests of the City, competitive bidding is hereby suspended for the purchase of a replacement sweeper from Municipal Maintenance Equipment, Inc.



Requires Council Approval: [] No [X] YES Meeting: 2/11/2014
[] Real Estate [] Other Party Signature Needed [] Recording Requested

General Information

Table with 2 columns: Description and Value/Status. Includes fields for Type (Commodity), PO Type, Attachment (No.: 0), Original Doc Number, Other Party (Municipal Maintenance Equipment), Certified Copies of Document, Project Name (Street Sweeper Purchase), Deed (None/Included/Separate), Project Number (NA), Bid Transaction # (N/A), and E/SBE-%.

Department Information

Department: General Services Division: Fleet Management
Project Mgr: Isena Garcia
Contract Services: Director: Reina J. Schwartz
Phone Number: 808-1163 Org Number: 13001311
Comment: Original Contract Amount: \$296,395

Review and Signature Routing

Department Signature or Initial Date
Project Mgr: [Signature] 1/22/2014
Contract Services:

City Attorney Signature or Initial Date
City Attorney: [Signature] 1/24/13

- [] Send Interoffice Mail to Reina J. Schwartz (12500)
[X] Notify for Pick Up Call 808-8465

Authorization Signature or Initial Date
Reina Schwartz
Director, General Services:
City Mgr: Yes [] No [X]

For City Clerk Processing
Finalized: Initial: [] Date: []
Imaged: Initial: [] Date: []
Received: (City Clerk Stamp Here)

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-13)

Resolution No. / Date

[Empty box for Resolution No. / Date]

PROJECT #: 2014-00079
PROJECT NAME: Sweeper
DEPARTMENT: General Services
DIVISION: Fleet Management

CITY OF SACRAMENTO

COMMODITIES AGREEMENT

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

*Municipal Maintenance Equipment
2360 Harvard Street
Sacramento, CA 95815
(916) 922-1101 Business Phone
(916) 922-1034 Fax*

(“CONTRACTOR”), who agree as follows:

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

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

2. **Equipment.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the equipment described in Exhibit A. CONTRACTOR shall provide said equipment at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for equipment outside the scope of Exhibit A unless prior to the shipping of such equipment: (a) CONTRACTOR notifies CITY and CITY agrees that such equipment are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional equipment; and (c) CITY, after notice, approves in writing a Contract Supplement specifying the additional equipment and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Contract Supplement, unless and until this Agreement or any Contract Supplement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
3. **Payment.** CITY shall pay CONTRACTOR for equipment furnished pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the equipment furnished pursuant to this Agreement unless pursuant to Section 2, above, CITY approves additional compensation for additional equipment. CONTRACTOR shall submit all billings for said equipment to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
4. **Facilities and Equipment.** CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing equipment pursuant to this Agreement.

5. **Special and General Provisions.** The Special Provisions and General Provisions set forth in Exhibit C and Exhibit D, respectively, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the furnishing of equipment or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit 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

Attachments

Exhibit A - Equipment to be furnished

Exhibit B - Reserved

Exhibit C - Special Provisions

Exhibit D - General Provisions

Exhibit E - Non-Discrimination in Employee Benefits

APPROVED TO AS FORM:

Kourtney C. Bandido

City Attorney

ATTEST:

City Clerk

CONTRACTOR:

Municipal Maintenance Equipment, Inc.

NAME OF FIRM

68-0263697

Federal I.D. No.

SR KH 028-913808

State I.D. No.

83385

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: _____*)

Frank Wheeler III

Signature of Authorized Person

Frank Wheeler III, Vice President

Frank Wheeler III, Vice President

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

EXHIBIT A

COMMODITIES AGREEMENT

EQUIPMENT TO BE FURNISHED

1. Representatives.

The CITY Representative for this Agreement is:

*Iseña Garcia, Program Specialist
Department Of General Services
Fleet Management
5730 24th Street, Bldg # 1
Sacramento, CA 95822
Ph (916)-808-1163 Fx (916)-399-9263
iygarcia@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:

*Frank Wheeler III, Vice President
Municipal Maintenance Equipment, Inc
2360 Harvard Street
Sacramento, CA 95815
(916)922-1001
fwheeler@source-mme.com*

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

2. Equipment to be purchased.

The City shall purchase one Schwarze Sweeper, model M6 Avalanche SE CNG mounted on a new 2012 Freightliner M2 112 CNG chassis, 1FVAC4DX2CHBU9551 (the "Equipment"). The sweeper shall be a demonstration unit furnished with a new manufacturer's warranty for (1) one year and unlimited miles. The following equipment shall be included with the Schwarze Sweeper body:

1. Single Engine
2. Standard Tube Main Broom
3. Dual Broom
4. Tilt Power Dual Broom
5. Squeegee Conveyor
6. Standard Hopper with 5.0 Cubic Yards Volumetric Capacity
7. Single Camera System
8. Rear LED Strobe with Guard
9. Painted White

The following equipment shall be included on the 2012 Freightliner M2 chassis:

1. 260HP Cummins ISL G CNG Engine
2. 33,000 GVWR
3. Allison 3500RDS Transmission
4. Dual Steering
5. 12" Parabolic Mirror Set
6. Air Conditioning
7. AM/FM Radio
8. Painted White

CONTRACTOR agrees that the Equipment shall be covered by the most favorable commercial warranties that CONTRACTOR gives to any customer for such supplies and that the rights to and remedies provided herein are in addition to and do not limit any rights afforded to the City at law or equity or by any other clause of this Agreement.

3. Delivery Date.

CONTRACTOR shall deliver the Equipment within 45 days of the Effective Date of this Agreement.

4. Trade-In Sweeper.

CONTRACTOR has agreed to accept a trade-in vehicle from the City ("City Trade-In"), vehicle identification number 1FVACXDJ5ADAP0148, as partial payment of the purchase price (as described in Exhibit B) for the Equipment. This conveyance of the City Trade-In shall be subject to the terms and conditions outlined in Exhibit F.

EXHIBIT B

COMMODITIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the furnishing of all equipment set forth in Exhibit A, including normal revisions, and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$296,395.00.

CONTRACTOR and City agree that the total cost of the Equipment is \$311,395.00, as calculated below, but CONTRACTOR has agreed to accept the City Trade-In as partial payment, bringing the City's total payment owed down to \$296,395.00.

Price New F.O.B. City Schwarze Sweeper	\$328,927.00
Demonstration Model Discount	41,927.00
Sub-total	<u>\$287,000.00</u>
8.50% Sales Tax	24,395.00
Sub-Total	<u>\$311,395.00</u>
City Trade-In Value	15,000.00
Total	<u>\$296,395.00</u>

2. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper furnishing of equipment and shall only be payable if specifically authorized in advance by CITY.
3. **Payments to CONTRACTOR.**
- A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
- B. All invoices submitted by CONTRACTOR shall contain the following information:
- (1) Job Name
 - (2) Description of equipment billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
- C. Items shall be separated into equipment furnished and Reimbursable Expenses. Billings

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

D. Requests for payment shall be sent to:

*Department of General Services
Fleet Management Division
5730 24th Street, Bldg #1
Ph: 916-808-6711/Fax:916-399-9263
Attn: Bobbie Small*

4. **Additional Equipment.** Additional equipment are those equipment or supplies related to the equipment of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Equipment shall be provided only when a Contract Supplement authorizing such Additional Equipment is approved by CITY in accordance with CITY's Contract Supplement procedures.
5. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after furnishing of all equipment and Additional Equipment hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all equipment and Additional Equipment furnished under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
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 7.

**EXHIBIT C
COMMODITIES AGREEMENT
SPECIAL PROVISIONS**

Guarantee

- a. The manufacturer and/or dealer delivering the Schwarze Sweeper mounted on a Freightliner chassis shall guarantee that they meet the minimum requirements set forth herein. If it is found that the equipment delivered does not meet the minimum requirements of this specification, the manufacturer and/or dealer will be required to correct the same at its expense. Failure of the manufacturer and/or dealer to bring the equipment into full compliance with all the requirements set forth in this specification within their 30 days of delivery shall constitute cause for rejection of the equipment. In case the equipment is rejected, it shall be removed promptly from the City's premises at the manufacturer's and/or dealer's expense. The manufacturer and/or dealer delivering the Schwarze Sweeper mounted on a Freightliner chassis will use only the manufacturer and the brand/models specified.
- b. In case of default by supplier, the City reserves the right to procure the articles or services from other sources and to hold the supplier responsible for any excess costs occasioned to the City thereby.

F.O.B.

All items are to be supplied F.O.B., City of Sacramento, California, full freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and 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.

Payment and Invoicing

Invoices, in duplicate, shall be mailed or delivered to the City of Sacramento, Department of General Services, Fleet Management 5730 24th Street, Bldg # 1, Sacramento, CA 95822, Attn: Bobbie Small.

Payment Terms

Payment terms are net 30 days unless Contractor offers a prompt payment discount. All prompt payment discounts if taken shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice.

Most favored customer pricing

Municipal Maintenance Equipment, Inc. represents and warrants to the City Of Sacramento that the equipment, parts and software offered to the City Of Sacramento under this Agreement are no less favorable than the equipment, parts and software offered to any other party purchasing similar quantities. In the event Municipal Maintenance Equipment, Inc. offers more favorable equipment, parts and software to any other party, Municipal Maintenance Equipment, Inc. will promptly notify the City Of Sacramento of such event and offer such more favorable equipment, parts and software to the City Of Sacramento commencing upon the date such more favorable

equipment, parts and software were offered to the other party. The City reserves the right to terminate the contract without further obligation by either party in the event price increases are not acceptable. In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City.

Quantities

The quantity specified in the pricing schedule are estimates only and based upon current known requirements and is subject to increase or decrease at the same terms and conditions.

Cooperative Purchasing

The use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification; and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

**EXHIBIT D
COMMODITIES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its furnishing of equipment hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or furnishing of equipment under this Agreement. (As used in this Exhibit D, the term "equipment" shall include both equipment and Additional Equipment as such terms is defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession, provide any services, or furnish any equipment under 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, provide an services., or furnish any equipment. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all

information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
 - C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any performance by CONTRACTOR under this Agreement, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
 - D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.
8. **Standard of Performance.** CONTRACTOR shall perform pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform pursuant to this

Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

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

10. Indemnity.

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

servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

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

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

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

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

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

B. Additional Insured Coverage

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

 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 who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
21. **Funding Availability.**
- A. This Agreement is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
 - B. The City's payment obligation under this Agreement shall not at any time exceed the amount of the funds appropriated and approved for such purpose by the Sacramento City Council.
 - C. This Agreement shall terminate without penalty at the end of the fiscal year in the event funds to make payment under this Agreement are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Agreement shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject further, to the limitation in subsection 9. of these General Conditions.
 - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under this Agreement will be accomplished.
23. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations

to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the this Agreement either for cause or for convenience as provided in Section 9 of these General Conditions.

25. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered, equipment furnished, or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.
26. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of this Agreement. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
27. **Guarantee.** The Contractor guarantees that all merchandise delivered and/or work or services performed under this Agreement shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of this Agreement, the Contractor shall be required to correct the same at Contractor's sole expense.
28. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform this Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for this Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

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

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

DEFINITIONS

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

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

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

You May . . .

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

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

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

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

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

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

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

You May Also . . .

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

EXHIBIT F

TERMS AND CONDITIONS FOR ACCEPTANCE OF CITY TRADE-IN

1. City agrees to convey to CONTRACTOR and assign to CONTRACTOR all City's right(s), title(s), and interest(s) in and to the City Trade-In, as described in this Agreement.
3. The City Trade-In is conveyed F.O.B. City. CONTRACTOR is responsible for all costs and arrangements (including labor and materials) associated with dismantling, loading, transporting, and/or removing the City Trade-In from the City. CONTRACTOR assumes sole responsibility for safety in removing the City Trade-In from the City.
4. CONTRACTOR shall comply with all federal, state, local, and OSHA regulations. CONTRACTOR shall comply with all rules which may be imposed by City from time to time.
5. City conveys the City Trade-In in an "as is" condition, and makes no guarantee, warranty, or representation, express or implied, as to quantity, kind, character, quality, condition, weight, size, or description of any property, its merchantability, its fitness for any use or purpose, or otherwise. CONTRACTOR agrees that full opportunity was given to inspect and examine the City Trade-In. CONTRACTOR's failure to inspect will not constitute grounds for any claim against the City.
6. All weights offered, shown, or calculated in respect to the City Trade-In, other than actual shipping weights, are estimated weights only.
7. CONTRACTOR understands and agrees that City will not be required to make available any documentation, reports, drawings, or instruction manuals for the City Trade-In.
8. The conveyance set forth in paragraph 1 hereof is exclusive of, and CONTRACTOR shall be responsible for, all taxes, levies, assessments, and the like arising out of, or in any way connected with, the transfer, dismantling, loading, transportation, removal, possession, or use of the City Trade-In conveyed hereunder.
9. If the City Trade-In is, at City's discretion, loaded and held for pickup, risk of loss shall pass to CONTRACTOR upon loading and all demurrage and other costs that may accrue in respect thereof will be paid by CONTRACTOR.
10. City shall be excused for any delay or failure in performance due to acts of God, war, riot, acts of civil or military authorities, fires, floods, accidents, strikes, differences with workers, delays in transportation, shortage of fuel, labor, or material, or any other circumstances or cause beyond the control of City in the reasonable conduct of business.
11. CONTRACTOR shall not sell or otherwise transfer all or any portion of the City Trade-In without requiring the transferee to provide the City protection against liability from the sale or transfer of the property which is at least equivalent to that afforded City under this agreement. In the event that CONTRACTOR sells or transfers all or any portion of the City Trade-In contrary to the provisions of this paragraph, CONTRACTOR shall be liable for any act or omission of the transferee, and CONTRACTOR shall indemnify, defend and hold harmless the City hereunder to the same extent as if no such sale or transfer had taken place.

12. To the fullest extent allowed by law, CONTRACTOR shall indemnify, defend, and hold harmless the City, its directors, officers, agents, and employees from and against all claims, actions, damages, losses, and expenses (including but not limited to attorneys' fees) arising by reason of any act or failure to act by CONTRACTOR, anyone directly or indirectly employed by CONTRACTOR, or anyone for whose acts or omissions CONTRACTOR may be liable hereunder, in connection with or in any way related to the donation, sale, purchase, dismantling, loading, removal and/or transporting of any property hereunder. The aforesaid indemnity and hold harmless shall include any claims, actions, damages, losses and expenses arising from or related to any act or failure to act by any entity or person, including City, its officers, employees and agents, in connection with the inspection, repair, reconditioning, safety or condition of the City Trade-In.

13. CONTRACTOR, for itself, its assigns, transferees, and successors, hereby waives and releases any and all claims of whatever sort or nature which may arise against City, its officers, employees, and agents, in connection with the transfer and acceptance of the City Trade-In. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, CONTRACTOR expressly acknowledges that this agreement is intended to release and extinguish, without limitation, all claims for losses of any sort or nature arising hereunder which CONTRACTOR does not know or suspect to exist.



SENTRY SELECT INSURANCE COMPANY
 STEVENS POINT, WISCONSIN
 (A PARTICIPATING STOCK COMPANY)
 A MEMBER OF THE SENTRY FAMILY OF INSURANCE COMPANIES

CERTIFICATE OF INSURANCE

ACCOUNT NUMBER 49-67776

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

Name and Address of Certificate Holder
 CITY OF SACRAMENTO
 5730 24TH ST BLDG 22
 SACRAMENTO, CA 95822

Name and Address of the Insured
 MUNICIPAL MAINTENANCE
 EQUIPMENT INC
 2360 HARVARD ST
 SACRAMENTO, CA 95815

This certificate is issued on 12-15-2013 and is effective until 12-15-2014. It certifies that policies of insurance listed below have been issued to the insured named above. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies. Limits shown may have been reduced by paid claims.

<u>Coverage Provided</u>	<u>Policy Number</u>	<u>Coverage Limits</u>
<u>General Liability</u>	49-67776-12	General Aggregate \$ 1,500,000
		Products Aggregate \$ 1,500,000
<u>Bodily Injury and Property Damage Combined</u>	OCCURRENCE	Pers/Adv Injury \$ 500,000
		Each Occurrence \$ 500,000
		Premises Damage \$ 100,000
		Medical Expense \$ 5,000
<u>Automobile Liability</u>	49-67776-12	Each Accident \$ 500,000
Includes: Bodily Injury and Property Damage Combined -Any Auto		
<u>Excess/Umbrella Liability</u>	49-67776-12	Each Occurrence \$ 3,000,000
		General Aggregate \$ 9,000,000
		Products Aggregate \$ 9,000,000
<u>Workers' Compensation and Employer's Liability</u>	49-67776-14	Statutory
		Each Accident \$ 500,000
		Each Disease/Employee \$ 500,000
		Each Disease/Policy \$ 500,000

THE CITY , ITS OFFICIALS, EMPLOYEES AND VOLUNTEERS SHALL BE COVERED BY POLICY TERMS OR ENDORSEMENT AS ADDT'L INSURED'S AS RESPECTS GENERAL AND AUTO 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.

80-C1035 (MECH)



CERTIFICATE OF INSURANCE - (CONT)

ACCOUNT NUMBER 49-67776

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

80-C1035 (MECH)

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