

**Meeting Date:** 2/10/2015

**Report Type:** Consent

**Report ID:** 2015-00124

**Title:** Contract Award for Accounts Payable Invoice Automation Project

**Location:** Citywide

**Recommendation:** Pass a Motion awarding a professional services contract for the Citywide Accounts Payable (AP) Invoice Automation Project, to PaperFree Corporation, in an amount not-to-exceed \$200,000.

**Contact:** Cassy Vaioleti-Matu, Program Analyst, (916) 808-8047; Ignacio Estevez, IT Manager, (916) 808-7349, Information Technology Department

**Presenter:** None

**Department:** Information Technology

**Division:** IT Business Management

**Dept ID:** 07001011

**Attachments:**

1-Description/Analysis

2-Background

3-Agreement

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**City Attorney Review**

Approved as to Form  
Audreyell A. Anderson  
2/3/2015 3:14:12 PM

**Approvals/Acknowledgements**

Department Director or Designee: Maria MacGunigal - 1/29/2015 11:37:50 AM

## Description/Analysis

**Issue Detail:** The City of Sacramento (the “City”) developed a Digital Strategy in 2014 that reviewed current information technology (“IT”) business systems and assets to ensure that new IT initiatives and strategic business technologies are sound and deliver the highest possible value and efficiencies to the City and its constituents.

One of the initiatives identified and funded under the Digital Strategy is the Citywide Accounts Payable (“AP”) Invoice Automation Systems project. The City currently utilizes a decentralized, paper-based vendor invoice processing model. This project will automate and streamline the vendor invoice processing procedures throughout the City by utilizing existing IT business systems to capture invoice images, electronically create and route payment vouchers for approval, and file related documentation in the City’s document management system (Citywide Content Management System or “CCM”).

Staff recommends awarding a Professional Services Agreement to PaperFree Corporation for the technical configuration, installation, and implementation of a Citywide AP Invoice Automation System.

**Policy Considerations:** The recommendations in this report are in accordance with the goals, objectives, initiatives, and vision of the City’s Digital Strategy, Sacramento City Code Chapters 3.64, and Administrative Policy 4102.

**Economic Impacts:** None.

**Environmental Considerations:** The report does not constitute a “project” and is therefore exempt from the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b)(3);15378(b)(2)].

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** The City desires to transform its current AP processing model to an innovative and industry-best practice business model through the use of technology. This initiative will maximize staff efficiencies throughout the City and will expedite the processing of City vendor invoices.

**Financial Considerations:** Once the AP Invoice Automation System is implemented, the City will realize savings because of reductions in the use of paper, printing, electricity, and data storage. Processing efficiencies should increase the City’s ability to take advantage of prompt-payment discounts. Processing efficiencies should also allow staff to allocate time currently spent on invoice processing to other priorities. The total cost of the services with PaperFree Corporation will not exceed \$200,000. Sufficient funding is available in the Capital Improvement Program (CIP) A07000700 (Digital Strategy Program) and A07000600 (Enterprise Resource Planning Replacement Program).

**Local Business Enterprise (LBE):** Net Incomm, Inc., a subcontractor of PaperFree Corporation, is a local business, based in Sacramento.

## **Background:**

As part of the City's 2014 Digital Strategy development and review process, the Accounts Payable (AP) process was identified as an opportunity for improvement that will result in citywide efficiencies. This business solution was prioritized along with other Digital Strategy initiatives and submitted for a budget appropriation as part of the City's annual budget development process. Funding was approved in FY2014/15 for the implementation of an AP Invoice Automation System (Reso 2014-0179).

On August 15, 2014, City staff released a Request for Proposal (RFP) for AP Invoice Automation implementation services. Thirty-three firms downloaded the RFP, and three submitted proposals. A team of City staff from Finance and Information Technology Departments evaluated the proposals and elevated one vendor, PaperFree Corporation, to the Demonstration Phase of the selection process. The Demonstration Phase included presentations, system demonstration, software implementation, and system functionality discussions.

After reviewing references and further internal discussions, the proposal evaluation team concluded that the proposal from PaperFree Corporation best met the City's business requirements to provide consulting, installation, integration, and maintenance and support services for the implementation of an AP Invoice Automation System.

City staff recommends that the City Council approve the motion to award a Professional Services Agreement to PaperFree Corporation for the technical configuration, installation, and implementation of the City's AP Invoice Automation System.

PROJECT NAME: Accounts Payable Invoice Automation Project  
DEPARTMENT: Information Technology  
DIVISION: Enterprise Applications Management

**CITY OF SACRAMENTO  
PROFESSIONAL SERVICES AGREEMENT \***

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

*PaperFree Corporation  
3164 Lionshead Avenue  
Carlsbad, CA 92010  
Phone: 1-888-726-7730 Fax 760-897-2400*

("CONTRACTOR or CONSULTANT"), who agrees as follows,

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

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

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

**CONTRACTOR**

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

PaperFree Corporation

NAME OF FIRM

Print name: Maria MacGunigal

26-1598611

Federal I.D. No.

Title: Chief Information Officer

281-8978-5

State I.D. No.

For: John F. Shirey, City Manager

1019650

City Business Op. Tax Cert. No.

APPROVED TO AS FORM:

TYPE OF BUSINESS ENTITY (check one):

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

\_\_\_\_ Individual/Sole Proprietor

Corp. (may require 2 signatures)

\_\_\_\_ Limited Liability Company

\_\_\_\_ Partnership

ATTEST:

\_\_\_\_ Other (*specify* \_\_\_\_\_)

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

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

Attachments

Exhibit A - Scope of Service

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

Exhibit B - Fee Schedule/Manner of Payment

Exhibit C - Facilities/Equipment Provided

Exhibit D - General Provisions

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

Exhibit E - Non-Discrimination in Employee Benefits

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

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

Name of Contractor: PaperFree Corporation

Address: 3164 Lionshead Avenue, Carlsbad, CA 92010

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

**EXHIBIT A**  
**PROFESSIONAL SERVICES AGREEMENT**

**1. Representatives.**

The CITY Representative for this Agreement is:

*Mrudul Sadanandan, IT Manager*  
*Information Technology Department*  
*915 I Street, Third Floor, Sacramento, CA 95814*  
*Phone: (916) 808-7894*  
*Email: [msadanandan@cityofsacramento.org](mailto:msadanandan@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:

*James Robinson*  
*PaperFree Corporation*  
*3164 Lionshead Avenue*  
*Carlsbad, CA 92010*  
*Phone: 1-888-726-7730 Fax 760-897-2400*  
*Email: [jrobinson@paperfreecorp.com](mailto:jrobinson@paperfreecorp.com)*

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

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

**3. Conflict of Interest Requirements.**

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

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

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

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

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

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

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

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

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

4. **Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
5. **Time of Performance.** The services shall be provided from the date written on the first page of this Agreement through December 31<sup>st</sup> 2015.

## SCOPE OF SERVICES

### 1.0 Background

The CITY currently utilizes a decentralized paper-based invoice processing model for Accounts Payable (“AP”) processing. Under this Agreement, the AP Invoice Automation Project (the “Project”), identified as one of the high-priority initiatives and funded under the CITY’s 2014 Digital Strategy, will automate and streamline the way the CITY processes invoices from vendors.

### 2.0 Project Overview

The Project will utilize existing IT business systems including the City’s EMC document management system, Citywide Content Management (“CCM”) and the City’s PeopleSoft Financial System, electronic Citywide Accounting and Personnel System (“eCAPS”), to capture invoice images, electronically create and route payment vouchers for approval, and file related documentation in CCM. CONTRACTOR will provide the technical configuration and software installation services described in the Scope of Work below (Section 3.0) to implement the Project.

### 3.0 Scope of Work

CONTRACTOR shall:

#### 3.1 Project Management

- Develop and provide a Detail Project Plan including the work breakdown structure, task, schedule and dependencies for CITY’s approval.
- Provide a methodology to manage and mitigate risks during the Project.

#### 3.2 System Analysis and Design

- Perform an evaluation of CCM and eCAPS for optimal integration to the AP Automation System.
- Provide a detailed Technical Design Document and Project Plan (“Technical Design Document”) addressing invoice document analysis, process flow design, hardware requirements and configuration plan, workflow and CCM/eCAPS integration.

#### 3.2 Business Process Design

- Recommend best practices to incorporate into a Business Process Design that includes a process flowchart, recommended changes to internal business practices, and recommendations for an on-going support structure for the technical infrastructure and business operations.
- Assist the CITY with the development of a Business Process Design and provide any documentation to properly support and maintain the AP Automation system.

### **3.3 Integration Development and Testing**

- Develop system integration between the capture solution within the CCM and eCAPS, for voucher creation and workflow kickoff process.
- Configure or custom develop the exporting invoice documents to CCM for retention.
- Develop the criteria used in the image capture process to provide data validation for invoice to Purchase Order (“PO”) matching
- Develop the departmental invoice workflow approval process for invoices that are not associated with a PO.
- Develop the General ledger coding
- Perform integration testing from document/data capture to voucher approval in the ERP system.

### **3.4 Software Installation, Configuration and Customizations**

- Perform technical configuration and software installation of EMC Captiva for Invoice Capture of invoices in development and production environments.
- Configure EMC Captiva for Invoice Capture of invoices to suit the business and technical requirements identified in the Technical Design document. Configuration to include out-of-the-box features and customizations required to meet the CITY’s business requirements. Provide and deliver integration to the City’s eCAPS System.
- Perform software installation of any custom module or application developed part of this project

### **3.5 Vendor Outreach Planning**

- Provide assistance in preparing and deploying a Vendor Outreach Plan to address invoice formatting standards to support AP Automation system.

### **3.6 Change Management**

- Develop a workforce transition plan which shall describe the work roles of CITY staff and their respective responsibilities from the current environment to the new environment.
- Develop and deliver change management and workforce transition management strategies and activities, including informational sessions and training sessions.

### **3.7 Knowledge Transfer**

- Provide knowledge transfer sessions, including:
  - End user training on scanning, quality assurance, data entry, and modules used in production processing.
  - System Administrator training including administration and troubleshooting for normal production operations.
  - Provide source code and documentation of software customizations developed by the CONTRACTOR for the Project.

### **3.8 Production Rollout**

- Provide assistance at system rollout, including, but not limited to, answering questions and resolving issues that arise.

### **3.9 Performance Measurement and Reporting**

- Develop and deliver performance measurement and reporting through standardized and ad hoc reporting capability. Capture data for reporting across all steps of the invoice processing system. Measurement design will allow measurement and trend analysis of key metrics and performance measures.

### **3.10 Post-Production Support Term**

- Upon CITY's request, CONTRACTOR shall provide post-production support on an as-needed basis to resolve functional and technical problems that may surface during the initial 180 days of operation of the live system. The cost of CONTRACTOR's post-production support shall be included in the total sum of this agreement as stated in Exhibit B.

## **4.0 Project Deliverables**

The following are the project deliverables ("established deliverables"), goals and expectations: CITY Project Manager will work with CONTRACTOR to agree on the project approach of the established deliverables which are identified below beginning at Section 4.1. Attachment 2 to Exhibit A includes the Deliverable Acceptance Form to be used for the established deliverables. CONTRACTOR shall complete, for the CITY's review and approval, the Deliverable Acceptance Form as it executes the established deliverables.

After CONTRACTOR completes the Deliverable Acceptance Form, CONTRACTOR shall review its performance with the CITY to verify whether CONTRACTOR has met the defined project expectations identified in the Scope of Work (Section 3.0) and the established deliverables below. If the CITY believes the CONTRACTOR's performance of a deliverable does not conform with the defined project expectations, the CITY will notify CONTRACTOR of such nonconformity in writing within 30 business days of the CITY's receipt of the CONTRACTOR's completed Deliverable Acceptance Form. CONTRACTOR shall then have a reasonable period of time, based upon the deliverable's severity and complexity, to correct the nonconformity.

The following includes the established deliverables that CONTRACTOR shall provide:

### **4.1 Project Management**

- Work Breakdown Structure ("WBS") including tasks, schedule and dependencies
- Manage Internal business process changes and training plan
- Detailed Vendor Outreach Plan
- Identify the CITY staffing resource requirements to support the implementation of the AP Automation system.

### **4.2 System Analysis**

- Comprehensive System Analysis Documents of CITY's Image Capture process in CCM and integration with eCAPS, related to paperless AP Automation system. This will include the industry's best practices for paperless invoice processing customized for the CITY. Analysis should include the comparison between centralized and decentralized scanning and invoice processing, and review of existing manual and ERP AP approval workflows outlining the opportunities for process improvements.

#### **4.3 System Design**

- Detailed Technical Design Document
- Technical hardware requirements
- System workflow diagrams and design
- Data flow diagrams & system validation rules

#### **4.4 Business Process Design**

- Voucher creation and workflow kickoff in the City's PeopleSoft ERP System
- Exporting invoice documents to EMC Documentum for retention
- Invoice to PO matching
- Invoice to departmental workflow approval (for invoices that don't have a PO)
- General ledger coding

#### **4.5 System Testing**

- Unit and end-to-end integration test case documents
- Exception handling documentation

#### **4.6 Training**

- Software administration training
- Provide advance level user training and documentation to utilize the AP Automation system.
- Training and documentation on procedures on how to handle system exceptions

#### **4.7 Deployment**

- Documentation of software installation and configuration procedures
- Documentation on monitoring the AP Automation system's performance and exception handling
- Production rollout plan
- Performance measurement and reporting

### **5.0 WARRANTIES**

- **System Performance Warranty.** CONTRACTOR represents and warrants that for a period of 180 calendar days following Final Acceptance by the CITY, the services and all other deliverables furnished

hereunder by CONTRACTOR shall: (i) meet the functionality requirements set forth in the Scope of Work and further defined in the Technical Design Documents, (ii) be free from all material defects; and (iii) perform in accordance with the specifications and configurations set forth in the Technical Design Documents. CONTRACTOR further represents and warrants that all CONTRACTOR-provided software configurations, modifications, customizations, data conversions and interfaces will function properly and in accordance with the Technical Design Documents, separately and as a fully integrated system, and when operated together will not cause any material delays, defects, or problems with the AP Automation system.

- **Third Party Agreements Warranty.** CONTRACTOR represents and warrants that CONTRACTOR's agreement to perform the services pursuant to this Agreement does not violate any agreement or obligation between CONTRACTOR and a third party.
- **Third Party Intellectual Property Rights Warranty.** CONTRACTOR represents and warrants that the services as delivered to the CITY does not infringe any copyright, patent, trade secret, or other proprietary right held by any third party. CITY's exclusive remedy and CONTRACTOR'S entire liability for any breach of this warranty shall be as set forth in Section 7D of Exhibit D to the Agreement.
- **Professional Services Warranty.** The services provided by CONTRACTOR shall be performed in a professional manner and shall be in accordance with generally accepted industry standards for the software implementation services and consulting industry.
- **Warranty Period.** Unless otherwise specified herein, the warranties in this section a) begin upon delivery of the goods or services in question and end one (1) year thereafter.
- **Exclusions.** CONTRACTOR shall not be responsible for non-performance issues that result from third-party hardware or firmware malfunction or defect where such third-party hardware or firmware was not provided by CONTRACTOR. CITY will reimburse CONTRACTOR for its reasonable time and expenses for any services provided at CITY's request to remedy the excluded non-performance issues.

## 6.0 **WARRANTY REMEDY**

With respect to a violation of the warranties described in section 3(d), the CITY's remedy shall be as follows:

- CITY will provide CONTRACTOR with written notification of the error and a detailed explanation of why the error does not meet the functionality requirements set forth in the Technical Design Documents. CONTRACTOR shall provide CITY with a problem identification and resolution plan for the warranty violation within five (5) calendar days of receiving notification. CONTRACTOR shall work with the CITY to promptly resolve the warranty issue within the agreed resolution plan timeframe. CONTRACTOR shall use commercially reasonable efforts to satisfactorily resolve the warranty issue within thirty (30) calendar days, or as otherwise agreed to by the parties after being notified of a warranty violation.
  - If said warranty violation is preventing the CITY from using eCAPS and CCM for Productive Use (a "Critical Violation"), CONTRACTOR shall respond to the notification within twenty-four (24) hours with a proposed resolution plan. CONTRACTOR will dedicate sufficient resources to satisfactorily resolve the Critical Violation as soon as practicable according to the resolution

plan. CONTRACTOR will use commercially reasonable efforts to satisfactorily resolve the resolution within (7) calendar days after being notified of a Critical Violation.

- For purposes of this Section, “Resolution of an error” shall include, but not be limited to, the following:
  - Provide a workaround for the error that allows the Software System to support the CITY’s business operations.
  - Provide for manual processing.
  - Provide a system fix or update.
  - Provide a correction to the Software System setup.
- If after thirty (30) calendar days from notification CONTRACTOR is unable to correct the warranty violation, CITY shall be entitled to receive a refund of the amounts paid to CONTRACTOR under this Agreement. The remedies specified in this section are not exclusive of any others CITY may have.

## 7.0. SYSTEM ACCEPTANCE

- **Conditional Acceptance.** Conditional acceptance of the system is granted by CITY when, as evidenced by the successful completion of user acceptance testing in a non-production environment, the functional requirements set forth in the Scope of Work and Technical Design Documents are met. Conditional acceptance may be granted notwithstanding the existence of open issues if: (a) the CITY Project Manager determines that none of the open issues significantly impairs the CITY’s ability to use the system; and (b) a mutually agreeable issues work plan is identified to resolve the open issues (“Conditional Acceptance Issues Work Plan”). Open issues include, but are not limited to, issues from the user acceptance tests and all open test issues on the test incident log regardless of the type of test.

A course of action to resolve the open issues may include, but is not limited to, completing the fixes during post-production support, utilizing a combination of resources from the CITY and CONTRACTOR to complete the fixes, and/or deferring the issue(s) or functionality to a later date.

- **Final Acceptance.** Once Conditional Acceptance has occurred and the system has been moved to the production environment, CITY shall have 30 business days from Conditional Acceptance to validate and provide Final Acceptance of the system or notify CONTRACTOR in writing of issues that remain open and how the issues do not meet the functional requirements set forth in the Statement of Work and in the Technical Design Documents.

Final Acceptance is granted by CITY when CONTRACTOR has resolved assigned issues described in the Conditional Acceptance Issue Work Plan. Final Acceptance may be granted notwithstanding the existence of open issues if: (a) the CITY Project Manager determines that none of the open issues significantly impairs the CITY’s ability to use the system in a production environment; and (b) a mutually agreeable issues work plan is identified to resolve the remaining open issues (“Final Acceptance Issues Work Plan”).

The course of action in the Final Acceptance Issues Work Plan may include but is not limited to, completing the fix during post production support, utilizing a combination of resources from the CITY and CONTRACTOR to complete the fix, and/or deferring the issue or functionality to a later date. If the CITY and CONTRACTOR are unable to reach an agreement on the issues work plan the Dispute Resolution Process will be utilized.

The CITY shall notify CONTRACTOR in writing of its Final Acceptance of the Software System. Except as provided in this section, in no event shall any other action or inaction by the CITY, including the CITY's use of the system in a production environment, constitute Final Acceptance of any portion of the system.

## **8.0. CITY'S RIGHTS**

CONTRACTOR grants to CITY a nonexclusive, perpetual, irrevocable, royalty-free, fully paid up, worldwide right and license to:

- Make, use, copy, edit, format, modify, translate and create Derivative Technology of the source and object code versions of the Product;
- Distribute and have distributed, to and by third parties, partial or complete source and/or object code versions of the Product and any Derivative Technology thereof; and
- Grant the rights set forth herein in the Work Product to third parties, including the right to license such rights to further third parties.

The foregoing license grants include a license under any current and future patents owned or licensable by CONTRACTOR to the extent necessary: (i) to exercise any license right granted herein; and (ii) combining the Product or Derivative Technology thereof with any hardware and software. Except as expressly licensed in this Agreement, CONTRACTOR retains all right, title and interest in and to the Product, subject to the license grant herein and CONTRACTOR's ownership of the Product, CITY shall own all right, title and interest in and to any Derivative Technology of the Product created by or for CITY.

"Product" means all work produced by CONTRACTOR pursuant to this Agreement, including, without limitation, all inventions, creations, expressions, improvements, computer software programs, specifications, operating instructions and all other documentation, whether patentable or unpatentable. "Derivative Technology" means: (i) for copyrightable or copyrighted material, any translation (including translation into other computer languages), portation, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. "Distribute" means to reproduce, license, rent, lease, sell, broadcast, publicly display, perform, transmit or otherwise distribute.

## **9.0 DISPUTE RESOLUTION PROCESS**

Any dispute, disagreement, claim or controversy between the parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved by first having the Project Manager for CONTRACTOR and the Project Manager for the CITY meet for the purpose of endeavoring to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within five (5) business days thereafter, the parties agree to elevate the dispute to the Managing Director level of CONTRACTOR and CITY's Information Technology Department Director. Failing such mutual agreement to resolve the dispute, the parties may pursue any other legal recourse available to it. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable or injunctive relief, may begin until the dispute resolution procedure, as described above is completed.

#### **10.0 NO TERMINATION OR SUSPENSION OF SERVICES**

In the event of a dispute between the parties, CONTRACTOR shall not interrupt or suspend or terminate the provision of services to the CITY or perform any action that prevents, impedes, or reduces in any way the provision of services or the CITY's ability to conduct its activities, unless: (i) authority to do so is granted by the CITY or conferred by a court of competent jurisdiction; or (ii) this Agreement has been terminated and CONTRACTOR has performed its obligations with respect to a Disentanglement; or (iii) the CITY has failed to pay CONTRACTOR undisputed invoices that are past due in excess of sixty (60) days after receiving notice from CONTRACTOR of such delinquency. In the event that CITY fails to make such full payment within said 60-day period, CONTRACTOR shall grant to CITY an additional thirty (30) days to render full payment provided that CITY requests such additional thirty (30) days; or where the subject matter of the dispute (i) CITY's alleged misuse of CONTRACTOR's intellectual property and/or confidential information or (ii) directly or indirectly causes CONTRACTOR to be unable to perform the applicable services in a commercially reasonable manner, pending final decision of a dispute hereunder CONTRACTOR shall proceed diligently with the performance of the services.

**EXHIBIT B**  
**FEE SCHEDULE/MANNER OF PAYMENT**

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$200,000.00.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*Mrudul Sadanandan, IT Manager  
Information Technology Department  
915 I Street, 3<sup>rd</sup> Floor, Sacramento, CA 95814  
(916) 808-7894  
msadanandan@cityofsacramento.org*

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

**Attachment 1 to Exhibit B  
Fee Schedule**

**1.0 Fee Schedule.** The total sum of the Agreement will not exceed \$200,000. The following is the associated fee schedule for this engagement:

**1.1 Deliverable Based Payment Schedule.** Each deliverable listed below shall require a completed Deliverable Acceptance Form (Attachment 2 to Exhibit B), reviewed and approved by the CITY as indicated in Section 4.0 of Attachment 1 to Exhibit A , prior to the CITY issuing any payments to CONTRACTOR for services rendered as listed below:

<b>Deliverables</b>	<b>Description</b>	<b>Total</b>
Business Planning	Deliver detail project plan, Develop Business Process analysis, implementation and deployment Plan. Assist with development of Vendor outreach Plan	\$20,000
System Design	Deliver System Analysis, Business Requirements and technical design document	\$15,000
System Development	Complete Application Development, customization and configuration. Also include the ERP Integration	\$20,000
Installation	Install all components of the solution	\$20,000
Testing & Training	Develop and Deliver Test Plan & Training Plan	\$10,000
Documentation & Knowledge Transfer	Deliver Administrative and End User Documentation	\$10,000
Project Completion	Final Acceptance	\$49,000
	<b>Total</b>	<b>\$144,000</b>

**1.2 Extended Support and Maintenance.** Extended support and maintenance shall begin at the Final Acceptance by the CITY’s Project Manager and not exceed the total sum of the Agreement indicated in Exhibit B. At the completion of the first year Extended Support, the CITY has the sole option to renew maintenance support on an annual basis. If the CITY elects to continue Extended Support, the annual support and maintenance cost will be paid at an amount of \$6,000 per year, for up to ten (10) additional one year renewal periods. After the complete of the five years, the annual Extended Support will may not be increased more than 2% per year of the previous annual renewal period.

<b>Description</b>	<b>Total</b>
Extended Support for One (1) Year	\$6,000
<b>Total</b>	<b>\$6,000</b>

**1.3 Travel and Contingency \***

- An additional \$34,000 is identified as contingency costs for those items that are unknown at this time. Examples include: Out of scope business requirements, additional technical services required by CITY, etc.
- An additional \$16,000 is identified for the total cost of travel.

<b>Description</b>	<b>Total</b>
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Travel	\$16,000
Contingency	\$34,000
<b>Total</b>	<b>\$50,000</b>

*\*Travel and Contingency costs shall be coordinated and approved in advance by the CITY's Project Manager. Any travel and/or contingency costs incurred by CONTRACTOR or CONTRACTOR's personnel that have not been pre-approved by the CITY's Project Manager shall not be reimbursed by the CITY.*

<b>DELIVERABLE ACCEPTANCE FORM</b>	
<b>Purpose:</b> The Deliverable Acceptance Form signifies sign-off of the delivered solution, it verifies what deliverables are being turned over to the CITY and that the CITY has accepted / approved those deliverables.	
<b>Date</b>	
<b>Project Name</b>	
<b>Important Notes for Completing this Document</b>	
Each section of the Deliverable Acceptance Form must be completed in full. If a particular section is not applicable to this project, then you must write <i>Not Applicable</i> and provide a reason.	

<b>LIST OF PROJECT DELIVERABLES COMPLETED</b>	
<b>Deliverables and Description of Work Completed</b>	
<b>Acceptance Response (Completed by CITY Project Manager)</b>	<input type="checkbox"/> Accepted <input type="checkbox"/> Not Accepted until below issues are addressed
<b>Issues / Comments</b>	

<b>PREPARED BY</b>	
<b>CONTRACTOR Project Manager</b>	
	<div style="display: flex; justify-content: space-between;"> <span>(name)</span> <span>(signature)</span> <span>(date)</span> </div>
<b>REVIEWED BY</b>	
	<div style="display: flex; justify-content: space-between;"> <span>(name)</span> <span>(signature)</span> <span>(date)</span> </div>
<b>APPROVED BY</b>	
<b>CITY Project Manager</b>	
	<div style="display: flex; justify-content: space-between;"> <span>(name)</span> <span>(signature)</span> <span>(date)</span> </div>

**EXHIBIT C  
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*]

1. CONTRACTOR shall be given the appropriate network access to the CITY's technical environment to accomplish the tasks listed in Attachment 1 to Exhibit A.

**EXHIBIT D  
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, unless compelled by subpoena or other legal process and with at least 10 days advance notice to the CITY prior to the disclosure. 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, photostatting, 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 and Limitation of Liability.**

- 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"), for Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, economic losses, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Limitation of Liability: Except for CONTRACTOR'S indemnification obligations under this Agreement, the total liability of CONTRACTOR (and its respective affiliates, partners, principals, officers, directors, employees, contractors, agents and representatives) relating to this Agreement will in no event exceed an amount equal to the fees paid or payable under this Agreement. In no event will CONTRACTOR (or its respective affiliates, partners, principals, officers, directors, employees, contractors, agents or representatives) be liable for any special, consequential, incidental, punitive or exemplary damages or loss (nor any loss of profits, savings, data, use of software or hardware or business opportunity, or interruption of business) even if advised of the possibility of such loss.
- C. 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. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

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

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

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

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

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

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

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

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

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds via a blanket endorsement 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. CONTRACTOR shall submit to CITY a signed declaration page referencing the blanket endorsement.

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

C. Other Insurance Provisions

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

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CONTRACTOR will provide CITY 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 evidencing the insurance required. The certificates shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT E**  
**REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

**INTRODUCTION**

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

**APPLICATION**

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

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

**DEFINITIONS**

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

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

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

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

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

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

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

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

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

#### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

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

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

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



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

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

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

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

The included employee benefits are:

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

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

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

**You May . . .**

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

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

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



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

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

The included employee benefits are:

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

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

**You May . . .**

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

**Discrimination and Retaliation Prohibited.**

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

**You May Also . . .**

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