

Meeting Date: 3/3/2015

Report Type: Consent

Report ID: 2015-00108

Title: Agreement: Laboratory Services for Drinking Water and Groundwater Analysis

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager, or the City Manager's designee, to: a) sign a Professional Services Agreement with BSK Associates, Inc., for laboratory services to test drinking water and analyze groundwater for an initial term of one-year with up to two one-year renewals, in an amount not-to-exceed \$141,754 for the maximum three-year term; and b) approve the annual renewals provided that sufficient funds are available for this purpose in the budget adopted for the applicable fiscal year(s).

Contact: Dan Sherry, Interim Engineering & Water Resources Manager, (916) 808-1419; Pravani Vandeyar, (916) 808-3765, Operations & Maintenance Superintendent, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Water Quality Lab & R&D

Dept ID: 14001371

Attachments:

1-Description/Analysis

2-Background

3-Contract

City Attorney Review

Approved as to Form

Joe Robinson

2/23/2015 6:15:33 PM

Approvals/Acknowledgements

Department Director or Designee: Mike Malone - 2/12/2015 9:55:06 AM

Description/Analysis:

Issue: The Department of Utilities (DOU) has an on-going need for laboratory services for the City's drinking water quality regulatory program. BSK Associates Engineers & Laboratories (BSK) will provide laboratory services needed for compliance with various federal and state drinking water quality monitoring requirements that apply to the City's potable water supply.

Policy Considerations: Compliance with state and federal drinking water quality regulations is consistent with the City Council focus areas of public safety, sustainability, and livability. City Council approval is required for service contracts in amounts of \$100,000 or more.

Economic Impacts: None

Committee/Commission Action: Not applicable

Environmental Considerations:

California Environmental Quality Act (CEQA): The Community Development Department, Environmental Services Manager has determined that the proposed action is exempt from CEQA under Section 15061(b)(3) of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed action also and constitutes ongoing administrative activity that is not a "project" under CEQA (CEQA Guidelines Section 15378(b)).

Sustainability Considerations: The City's drinking water quality monitoring program is consistent with the City's Sustainability Master Plan in advancing the goal of conserving the use and protection of sources of water.

Rationale for Recommendation: On December 3, 2014, DOU issued Request for Proposals (RFP) #P15141371016 for Laboratory Services for Drinking Water and Groundwater Analysis. Seven proposals were received and opened on January 5, 2015. The DOU selection panel evaluated the Proposals submitted and determined BSK to be the top-ranked firm to provide these services.

Financial Considerations: The proposed services will be charged to Water Quality Laboratory and Research and Development operating budget (water fund 6005). The proposed agreement has an initial one-year term, in the amount of \$47,252, with two one-year renewal options, for a total not-to-exceed amount of \$141,754 over the maximum three year term. There is sufficient funding available for the FY 2014/15 initial one-year term. Renewal of the contract for succeeding one-year terms will be subject to the availability of sufficient funds in the budget adopted for the applicable fiscal year.

Local Business Enterprise (LBE): BSK meets the City's LBE participation requirement.

Background

The City of Sacramento Department of Utilities (DOU) is responsible for the production of drinking water. The City's drinking water supply depends on three water sources: the American River, the Sacramento River, and groundwater. Approximately 85 percent of the supply is provided by the City's two water treatment plants: The E.A. Fairbairn Water Treatment Plant which draws from the American River water just downstream of the Howe Avenue Bridge, and the Sacramento River Water Treatment Plant which draws a blend of the American and Sacramento Rivers just downstream of their confluence. The remaining 15 percent of the supply is provided by 29 wells. Groundwater from wells and surface water from the City's treatment plants are pumped into the distribution system.

The drinking water quality provided by DOU meets or surpasses all state and federal minimum drinking water standards set to protect public health. The United States Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water (OGWDW), along with EPA's ten regional drinking water programs, oversees the implementation of the Safe Drinking Water Act, which is the national law safeguarding tap water in America. The California State Water Resources Control Board Division of Drinking Water (DDW) is the primacy agency for the State of California, whose regulations cannot be less stringent than the comparable Federal regulation. In many cases, California regulations are stricter than Federal regulations. In addition to Federal and State regulations, specific conditions can be imposed on the City by the local DDW Field Operations Branch District Engineer through the permitting process.

The City meets state and federal drinking water quality regulatory compliance monitoring requirements through the excellence of its Water Quality Laboratory and the use of contract laboratory services for analyses that the City does not conduct in-house. The contract laboratory also provides analytical services as back-up to the City's Water Quality Laboratory for various heavy metal analyses on untreated source water, treated drinking water, groundwater samples, and drinking water treatment residual solids.

PROJECT #: 6005-14001371-433061
PROJECT NAME: LABORATORY SERVICES FOR DRINKING WATER AND GROUNDWATER ANALYSIS
DEPARTMENT: ENGINEERING & WATER RESOURCES
DIVISION: WATER QUALITY LAB & R&D

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

*BSK Associates Engineers & Laboratories
1414 Stanislaus Street, Fresno, CA 93706
Phone: (559) 497-2888/Fax: (559) 485-6935*

(“CONTRACTOR”), who agree as follows:

- Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager’s authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefore, the General Provisions shall control over said terms or conditions.

* **This form to be used for all professional services, except professional services related to a construction project and professional services performed by architects, landscape architects, professional engineers, or professional land surveyors.**

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

 City Attorney

ATTEST:

 City Clerk

Attachments

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

CONTRACTOR:

NAME OF FIRM

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify: _____*)

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: _____

Address: _____

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

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

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.

- d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

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

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

Signature of Authorized Representative

Date

Print Name

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Department of Utilities, WQ Lab and R&D
7501 College Town Drive, Sacramento, CA 95826
Phone: (916) 808-3737 Fax: (916) 808-3780 E-mail: lzhang@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:

*Glen Brown
BSK Associates Engineers & Laboratories
1414 Stanislaus Street, Fresno, CA 93706
Phone: (559) 497-2888/Fax: (559) 485-6935/Email: gbrown@bskinc.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. Insurance. Insurance requirements are specified in Exhibit D, Section 11.

3. Conflict of Interest Requirements.

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

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

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

- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

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

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

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

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

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

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

4. Scope of Services.

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

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

ATTACHMENT 1 TO EXHIBIT A

This Scope of Work is for providing contract laboratory services to the City of Sacramento's drinking water program consisting of various Title 22 and other analyses performed on water and residual solid samples, and the provision of on-call services. Schedule of services is provided in page 8 of this attachment.

The period during which the consultant services described herein will be performed will extend from January 2015 through approximately December 2017; however, some assignments may need to be completed after this time period.

TestAmerica's Irvine facility is designated as the prime location where a dedicated project manager will be assigned to provide a single point of contact for all services required under the proposed contract, including courier requests, sample analyses, analytical reporting, and invoicing.

The following tasks will be performed by BSK Associates Engineers & Laboratories:

Task 1 - Title 22

The State of California Title 22 drinking water system monitoring regulations require analysis of certain regulated and unregulated parameters on a routine basis. TestAmerica will provide laboratory services for the City's Title 22 compliance monitoring from potable groundwater and surface water sources for the following parameter categories:

- Selected SOCs
- Cyanide
- Gross Alpha and Radium 228
- Cryptosporidium
- Chromium(VI)

Subtask 1:a Management of Services

Michael Ng Project Manager will be the primary contact for all project-related issues. He will serve as the liaison between the City of Sacramento and the project team representatives and BSK's technical staff members, communicating analytical needs as well as general administrative and technical issues. The responsibilities of the Project Manager include:

1. Review all project documents and address any discrepancies or concerns.
2. Participate in project start-up meeting(s) with the client before project initiation.
3. Establish a list of pertinent client contacts to ensure clear channels of communication for all project inquiries and deliverables.
4. Set-up the project in Element, our Laboratory Information Management System. This is the first key step to documenting and storing the project specific methods, target analytes, limits and EDD formats.
5. Be responsive at all times to the inquiries from the client.
6. Communicate project objectives, tasks and deadlines to all laboratory team members and technical staff.
7. Coordinate courier staff for daily sample pickup and delivery of samples to outside subcontract

laboratories.

8. Communicate and resolve any discrepancies between the Chain of Custody and the sample delivery.
9. Approve sample receipt (Work order) within 24 hours of sample receipt at the Irvine laboratory.
10. Provide sample receipt confirmation to City of Sacramento that includes a list of samples received and tests to be performed.
11. Track work in progress and communicate any problems or issues to the client and ensure resolutions are implemented.
12. Provide final review and approval of analytical reports, EDDs, and invoices.
13. Initiate corrective action for any non-compliance issues related to customer service.
14. Communicate by email and/or phone to the City of Sacramento on a quarterly basis at a minimum to review the upcoming analytical schedule and discuss any non-scheduled changes or additions.

Subtask 1.b Certifications and Detection Limits

BSK is certified to perform a full spectrum of organic, inorganic and microbiological parameters that meet State and Federal regulatory programs as well local agencies requirements. BSK offers analytical services in support of the Safe Drinking Water Act (SDWA) which regulates the quality of our nation's drinking water.

BSK will provide analyses and reporting limits that meet State and Federal drinking water MCLs and detection limit reporting requirements. BSK will provide notification to the City's contract manager if any certifications or detection limits do not meet State and Federal regulatory requirements. If any services other than those specified in Subtask 1.m need to be subcontracted to specific entities, prior approval of the City's contract manager will be obtained.

Subtask 1.c Sample Custody and Transfer

When samples arrive at the BSK facility, sample receiving personnel inspect the coolers and samples to determine integrity by comparing sample labels with the COC, checking temperature blanks, use of appropriate containers and preservation, by visual checks of the container for possible damage and if analyses with short holding times are requested, the dates and times are inspected to ensure that holding times have not already expired. Any deviations from the checks that question the suitability of the sample for analysis or incomplete documentation as to the tests required will be resolved by notification to the client.

As samples are received at the laboratory, they are logged into a database that immediately assigns a unique laboratory identification number to each sample. With this laboratory ID number, samples can be monitored through every stage, providing an accurate account of sample status from analysis to QA review to report generation and through sample disposal. TestAmerica will provide the City view status on-line via its web-site.

BSK has an acceptance policy under which samples shall be accepted or rejected.

These include:

1. A COC filled out completely;

2. Samples must be properly labeled;
3. Proper sample containers with adequate volume for the analysis and necessary QC;
4. Samples must be preserved according to the requirements of the requested analytical methods;
5. Sample holding times must be adhered to;
6. All samples submitted for Volatile Organic analyses must have a Trip Blank submitted at the same time;
7. The client will be notified if any sample is received in damaged condition Data from samples which do not meet these criteria are flagged and the nature of the variation from policy is defined.

Courier Services and Sample Pick-Up for City of Sacramento is offered by BSK's facility. BSK will pick up samples or drop off supplies during business hours, from 8 am to 5 pm, Monday through Friday, free of charge. Courier services must be arranged at a minimum 24 hours in advance. BSK's in-house courier, stationed out of our Rancho Cordova laboratory, has been trained on all aspects of environmental sample acceptance protocols. He will ensure the integrity of the samples and observe proper temperature requirements during transport.

Subtask 1.d Sample Storage and Disposal

Samples are properly stored at the laboratory suitable for the sample matrix and analyses to avoid deterioration, contamination or damage to the sample from the time of receipt until all analyses are complete. Access to the BSK's laboratory is controlled and samples are accessible to laboratory personnel only.

BSK will dispose of samples, sample extracts and digestates, at no additional cost to clients, 30 days after the final report is issued or longer if required by State or EPA and client agreement with proper notification of request to the laboratory Project Manager. Samples are disposed of in accordance with the laboratory's waste disposal procedure under Environmental Health and Safety Manual or returned to the client upon special request.

Subtask 1.e Hold Times for Samples

For samples received requiring analysis with short holding time requirements delivered on weekends or with less than 1/2 the holding time remaining, BSK will make every effort to meet holding times, but we do not guarantee meeting these. No penalties or liabilities will apply in these cases.

If hold times are not met due to laboratory error, samples from resampling will be expedited at no extra charge to the City in order to meet the original timing for providing final results.

Subtask 1.f Turn-Around Time

Data will be presented in BSK's standard electronic report format (equivalent to a Level II data package) on ten (10) standard business day turnaround in excess of a maximum MCL with additional five (5) working days allowed for the production and delivery of final analytical reports for all tests.

Turn-around time starts at the time of sample pick-up by the laboratory's courier.

If turn-around time cannot be met due instrument failure or other unforeseen problems, the laboratory Project Manager will notify the City prior to the initial 15 day turnaround with an estimated date of completion. No charges will be billed to the City for any analyses that have not been completed by the laboratory.

Subtask 1.g Quality Assurance/Quality Control Program and Reporting

BSK is committed to providing quality environmental analytical services to all of its clients. To maintain this high level of quality, an extensive Quality Assurance (QA) Program has been implemented within the BSK Network. BSK's goal is to provide legally defensible analytical data of known and supportable quality.

A Quality Assurance Program is a company-wide system designed to ensure that data produced by BSK conforms to the highest standards set by state and/or federal regulations. The program functions at the management level through company goals and management policies, and at the analytical level through standard operating procedures and quality control. These two levels are administered through data control and review processes. The final result is a data package that is reproducible, technically accurate, and useful to the client.

BSK analyzes thousands of environmental and industrial samples every month. Sample matrices vary among drinking water, effluent water, groundwater, and sludge and soils. The Quality Assurance Program contains specific procedures and methods to test samples of differing matrices for chemical, physical and biological parameters. The Program also contains guidelines on maintaining documentation of analytical process, reviewing results, servicing clients and tracking samples through the laboratory.

The technical and service requirements of all requests to provide analyses are thoroughly evaluated before commitments are made to accept the work. This includes a review of facilities and instrumentation, staffing, and any special QC or reporting requirements. All measurements are made using published reference methods or methods developed by BSK.

BSK complies with the required frequencies for LCS/LCSD and MS/MSD per batch of 20 samples. Additional samples provided by the client and requested on the COC for site specific MS/MSD will be performed at no additional charge. Any re-analysis required due to unacceptable QA/QC results impacted by a laboratory error will be performed at no additional cost to the City.

Subtask 1.h Sample Containers

BSK offers clean sampling containers for use by clients. These containers are obtained from reputable container manufacturers and meet EPA specifications as required. Any certificates of cleanliness that are provided by the supplier are maintained at the laboratory.

BSK shall deliver the clean sample containers to the City pre-labeled (labels affixed to bottles) and grouped by sampling location.

Subtask 1.i Analytical Reports

The results of each test are reported accurately, clearly, unambiguously, and objectively in accordance with State and Federal regulations as well as client requirements.

Data obtained from analyses are summarized or reduced into a final computerized report. Before issuing a final report, the data are validated by a four step verification process. The analyst enters and reviews the data. This is then followed by a thorough peer review by another qualified analyst or the section supervisor. The project files containing all pertinent information, including data summaries, are then reviewed by the Project Manager. In most instances, no additional review is warranted. However, if necessary, a final review may be carried out by the QA Officer. All reports are reviewed and signed by authorized personnel.

In consideration of a more "environmentally friendly" reporting format, BSK delivers analytical report solely in electronic format (no hardcopy/paper report provided). A PDF format via email will be the

preferred deliverable format. A hard copy and a duplicate report may be provided upon request at no additional charge.

BSK will provide a Level II report format to the City which includes:

1. project Name/title as provided on the COC form;
2. sample collection date;
3. sample receipt date;
4. date of analyses;
5. date reported or date of revision, if applicable;
6. unique identification of the report (work order number) assigned by the laboratory at the time of log in;
7. analytical results, method, detection/reporting limits;
8. QA/QC data for each method performed;
9. definition of data qualifiers and reporting acronyms;
10. a copy of the completed chain-of-custody form;

Subtask 1.j Title 22 Results

BSK laboratory will report Title 22 results to the State of California, using the State's reporting format, including using the State's reporting format and complying with State deadlines. An electronic copy will be provided to the City as soon as it is available. A printout from Write on and a copy of the res files from Write on will be provided as a hard copy and electronic copy to the City at no additional charge.

Subtask 1.k Detection Levels

BSK laboratory will achieve the detection levels provided in Attachment 1 to Exhibit B. Analyses that do meet quoted detection levels will be documented and explained in detail on the analytical report. Any re-analysis required due to a higher than acceptable agreed upon detection level will be performed at no additional cost to the City, with the laboratory providing acceptable detection level through BSK laboratory(s) or subcontractor.

Subtask 1.l Travel/Trip Blanks

Travel Blanks or Trip Blanks will be provided to the City with a recommendation of one set per cooler that should accompany every sample requested for Volatile Organics analyses and Semi-volatiles Organics compounds analyses. Analyses of the travel blanks for both volatile organics and semi-volatiles will be performed at no additional cost.

Subtask 1.m Subcontracted Laboratories

BSK will be subcontracting Asbestos test to L.A. Testing in Pasadena, CA, radium 228 test to Davi Laboratories in Hercules, CA, Cryptosporidium test to BioVir in Benicia, CA and 2,3,4,8-TCDD to MAXXAM Labs in Toronto, Ontario, Canada.

Subtask 1.n Retention of Records

BSK has developed a formal record retention policy in its Quality Management Plan that outlines the

period of time various record types must be archived. Archives are indexed such that records are accessible on either a project or temporal basis. Archives are protected against fire, theft, loss, deterioration and vermin. Electronic records are protected from deterioration caused by magnetic fields and/or electronic deterioration. Access to archives is controlled and documented.

BSK will retain all test results, related raw data and accompanying quality control data for the City for a period of not less than five years.

Task 2 – Residual Solids

Residual solids generated by City of Sacramento’s drinking water treatment operations must be analyzed as a condition of their acceptance in Yolo County landfill. BSK will provide laboratory services to determine the total and soluble metals of residual solids using USEPA 6000/7000 Series Methods for the following constituents:

CCR Title 22 metals list: antimony (Sb), arsenic (As), barium (Ba), beryllium (Be), cadmium (Ca), chromium-total (Cr), cobalt (Co), copper (Cu), lead (Pb), mercury (Hg), molybdenum (Mo), nickel (Ni), selenium (Se), silver (Ag), thallium (Tl), vanadium (V), and zinc (Zn). The following constituents that are not part of Title 22 list will also be analyzed: aluminum (Al), boron (B), manganese (Mn), and iron (Fe).

The constituents listed below will always be analyzed annually for the Soluble Metals using the Waste Extraction Test (WET) with two buffer solutions; the standard method using Citrate and other using deionized water:

aluminum (Al), arsenic (As), barium (Ba), beryllium (Be), chromium (Cr), cobalt (Co), iron (Fe), lead (Pb), manganese (Mn), molybdenum (Mo), nickel (Ni), and vanadium (V).

Subtask 2.a Support services will be provided according to the descriptions set forth in Sub-tasks 1.a through 1.n.

Task 3 - On-call Services

Support services will be provided according to the descriptions set forth in Sub-tasks 1.a through 1.n. Any work outside of the original scope of the program including analyses requested but not listed herein shall be conducted in accordance with the BSK Laboratories Fee Schedule listed in Attachment 1 to Exhibit B.

Key Personnel

Michael Ng will serve as the project manager. BSK Project Management team includes the Laboratory Director, Project Manager(s), Laboratory Section Managers or Supervisors, Analysts, Sample Receiving Staff and Quality Assurance Program Department.

Special Requirements

- Contractor shall provide the City with electronic copies in specified EDD format of all work products and data files.
- Contractor shall not make public information releases or otherwise publish/release any information obtained or produced by it as a result of, or in connection with, the performance of services under this Scope of Work without the prior written authorization from City's contract manager.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$ 141,754.00 .
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. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
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:

*Department of Utilities, WQ Lab and R&D
7501 College Town Drive, Sacramento, CA 95826
Phone: (916) 808-3737 Fax: (916) 808-3780 E-mail: lzhang@cityofsacramento.org
Attn: Lin Zhang*

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 costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

ATTACHMENT 1 TO EXHIBIT B

**PROJECT COST AND BILLING RATES FOR
DRINKING WATER QUALITY CONTRACT LABORATORY SERVICES
FOR CALENDAR YEARS 2015 - 2017**

1. Project Task and Total Costs

The task and total project costs for Fiscal Year (FY) 2014/15, FY 2015/16, FY 2016/17 and FY 2017/18 through December 2017 are provided below.

	FY15	FY16	FY17	FY18	Task Total
Task 1: Title 22+LT2	\$2640	\$10740	\$69375	\$180	\$82935
Task 2: Residual Solids	\$393	\$393	\$393	\$0	\$1179
Task 3: On-call Services	\$9607	\$19213	\$19213	\$9607	\$57640
FY Total	\$12640	\$30346	\$88981	\$9787	\$141754

FY2014/15 Funding is \$12640, and funding for FY 2015/16, FY 2016/17, and FY 2017/18 through December 2017 is anticipated in the amounts of \$30346, \$88981 and \$9787, respectively, pending City Council approval of the FY 2015/16, FY 2016/17, and FY 2017/18 budgets.

The City Representative can approve reallocations of the above budget amounts from one task to another, and can approve carrying over unused funding from one Fiscal Year into the next, provided that the not-to-exceed amount specified in Exhibit B is not exceeded.

2. Additional Analyses

Any work outside of the original scope of the program including analyses requested but not listed herein shall be conducted in accordance with the BSK Laboratories Fee Schedule listed in Attachment 1 to Exhibit B with a discount of 40% off all published prices.

3. Expedited Turn Around Time

Expedited turnaround time may be available and must be pre-approved by the laboratory. The laboratory's ability to provide expedited turnaround time depends upon capacity at the time of request. Expedited turnaround delivery is contingent upon meeting the agreed upon delivery date/time and numbers of samples. BSK's expedited turnaround time surcharges are:

- 5 Business Days TAT =25%
- 3 Business Days TAT = 50%
- 2 Business Days TAT = 75%
- 1 Business Day TAT = 100%

Expedited turnaround times are based on receipt at the laboratory by 10:30 a.m. Results will be provided via e-mail by close of business, prevailing time.

5. Resampling Credit

Contractor will provide a credit against fees billed for laboratory services for costs reasonably incurred by City to conduct re-sampling if the Contractor's sample results or Quality Assurance/Quality Control (QA/QC) do not meet State or federal drinking water regulatory requirements, due to any error or omission or violation of any provision of the Agreement by the Contractor. City shall notify Contractor in writing of City's determination that the Contractor's sample results or Quality Assurance/Quality Control (QA/QC) did not meet State or federal drinking water regulatory requirements not less than seven calendar days prior to conducting such re-sampling, to provide Contractor an opportunity to respond to such determination or propose a more cost-effective re-sampling approach; provided that City may conduct such re-sampling less than seven calendar days after providing such notice to Contractor to the extent that it is necessary to do so in order to comply with State or federal time lines for sampling and reporting.

NOTE: The laboratory will not be held liable for re-sampling costs by City for hold time violations for analytical methods with specified method hold times of 48 hours or less (ie. Nitrate, Nitrite, Cr VI, Coliform, etc.), except for samples for which Contractor agrees to a short hold time expedited analysis with mutually agreed upon conditions. All other QA/QC and regulatory requirements still apply.

6. Monthly Statement

A monthly statement will be provided to the City as requested which will summarize analyses by task or work order. Individual invoices will be provided with the report along with the monthly statement.

Followed by 2015-2017 Contract Laboratory Analyses Cost Form, Analytical Method Details and The Contract Laboratory Schedule Of Fees.

Attachment 5 - Cost Estimate Form

CY 2015-2017 Contract Laboratory Analyses
FORM A: DRINKING WATER / TITLE 22 (Subject Area 1)

Water Quality Parameters	Description	Analytical Method	Alternative Analytical Method	Detection Level	Unit Price	Est. # of Analyses for 3 year period	Amount	Total	If subcontracted analyze, provide subcontractor name
Part 1: to be performed by contract lab									
Selected Required SOCs	Surface Water Treatment Plants and Wells								
	The list of SOCs refers to California Required list	625	✓		75	70	5250	5250	
	The list of SOCs refer to California Required list	515	✓		75	70	5250	5250	
	Carburetor - namp/ (California Regu. and list)	50	✓		50	70	3500	3500	
	Diesel	549	✓		70	70	4900	4900	
	Industrial	548	✓		75	70	5250	5250	
	(Agriculture)	547	✓		50	70	3500	3500	
	EUB and DBCP	504.1	✓		55	70	3850	3850	
	2,3,7,8 TCDF	747.3	✓		200	70	14000	14000	Metrum
	Pesticides: PCBs (California Required list)	616-658	✓		50	70	3500	3500	
	Surface Water Treatment Plants and Wells	100-810	✓		50	35	1750	1750	L.A. Testing
	Surface Water Treatment Plants and Wells	coliform	values		40	35	1400	1400	
	Surface Water Treatment Plants and Wells	400-CN	✓		20	35	700	700	
	Surface Water Treatment Plants	1632	✓		410	72	31680	31680	Flowir
	Surface Water Treatment Plants and Wells	219.6218.7	218.6		20	35	3530	3530	
Surface Water Treatment Plants and Wells	719.3	✓		15	35	525	525		
Surface Water Treatment Plants and Wells	71100	EPA (M-12)	✓	2h	35	1225	1225		
Surface Water Treatment Plants and Wells	804			85	35	2975	2975	David Labs	
Annual Residential Solids Analyze for Landfill Acceptance									
(NOTE: BSK will analyze using EPA 3090 Digestion followed by ICP or ICP/MS for all the listed metals. The unit price is based on analyzing at 21 metals on each sample submitted and includes the digestion fee)	Sb	60007000			5	3	15	15	
	As	60007000			5	3	15	15	
	Ba	60007000			5	3	15	15	
	Be	60007000			5	3	15	15	
	Ca	60007000			5	3	15	15	
	Cr	60007000			5	3	15	15	
	Cu	60007000			5	3	15	15	
	Pb	60007000			5	3	15	15	
	Hg	60007000			5	3	15	15	
	Mn	60007000			5	3	15	15	
	Mo	60007000			5	3	15	15	

BSK

Associates

Engineers & Laboratories

2013 Schedule of Fees

Analytical Chemistry



An Employee-Owned Company • Analytical Testing • Construction Observation • Ecological Services • Engineering
Geology • Environmental Engineering • Geotechnical Engineering • Materials Testing • Water Resources

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

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

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and

expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be

responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully

performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any 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. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased or used by CONTRACTOR, its sub-consultants, and subcontractors, 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 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 accident. 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 in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the City is not required. _____ (CITY Representative initials)

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. Professional Liability (Errors and Omissions) insurance:

Is _____ Is not [check one] required for this Agreement.

If required, such coverage must be continued for at least _____ year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

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, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased or used by CONTRACTOR, its sub-consultants, and subcontractors.
- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

- (1) Except for professional liability, CONTRACTOR's insurance coverage, including excess insurance, 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:VI. 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 in writing prior to the 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) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento

c/o Ebix RCS

Reference #: (This number will be provided by EBIX after Agreement approval.)

PO Box 257

Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to:

CertsOnly-Portland@ebix.com

(3) 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.”

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

You May . . .

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

City of Sacramento
Procurement Services Division
915 I Street, New City Hall, 2nd Floor
Sacramento, CA 95814

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

City of Sacramento
Procurement Services Division
915 I Street, New City Hall, 2nd Floor
Sacramento, CA 95814
- 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.