

Meeting Date: 3/17/2015

Report Type: Consent

Report ID: 2015-00121

Title: Agreement: Utility Payment Lockbox Service

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to 1) execute a Non-Professional Services Agreement with Check Processors Inc. to provide Utility payment processing and imaging services, with an agreement term of one year and up to four one year extensions, for an amount not to exceed \$400,000 for the maximum agreement term through March 31, 2020, and 2) approve the one year term extensions provided that funding is available for this purpose in the approved budget for the applicable fiscal year.

Contact: Shellette Smallwood, Program Manager, (916) 808-4928; Bill Busath, Interim Director, (916) 808-1434, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Account Management

Dept ID: 14001631

Attachments:

1-Description/Analysis

2-Background

3-Agreement

City Attorney Review

Approved as to Form

Joe Robinson

3/10/2015 1:39:45 PM

Approvals/Acknowledgements

Department Director or Designee: Bill Busath - 2/27/2015 12:18:28 PM

Description/Analysis

Issue Detail: The City currently receives lockbox services via the City-wide banking contract with Bank of America, which provides limited lockbox and technology options. In addition, the location of the lockbox was moved from San Francisco to Los Angeles in August 2012, resulting in payment processing delays for customers and costly courier fees each day. The City also provides convenient options for utility bill customers to pay their bill, which includes local authorized neighborhood pay stations. The City's current contract agreement with Bank Up, to provide for the collection and processing of utility bill payments made at the authorized pay stations, will expire March 31, 2015. After receiving approval from City Council, on August 19, 2014, to issue a Request for Proposal (RFP), City staff conducted an RFP process for the processing of both lockbox payments and payments received from local pay stations, in addition to receiving enhanced services and technology to streamline processes and create efficiencies. Check Processors Inc. (CPI) was selected as the top-ranked proposer to provide these services, and staff is recommending approval of an agreement with CPI to provide these services for a maximum five-year term.

Policy Considerations: This recommendation is in accordance with the Mayor and City Council mission to ensure a local government that is accountable, fiscally responsible, accessible, transparent, efficient, and responsive.

Economic Impacts: None.

Environmental Considerations: The proposed agreement for lockbox service is an administrative activity that does not constitute a "project" under the California Environmental Quality Act (CEQA), and is exempt from CEQA review (CEQA Guidelines Section 15378(b)(2)).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The recommendation from staff follows an extensive competitive RFP process. An evaluation panel consisting of members from the City Treasurer's Office and the Business Services and Engineering Divisions of the Utilities Department reviewed six proposals (from US Bank, Klik Technologies, Bank of America/Merrill Lynch, Check Processors Inc. (CPI), Wells Fargo, and Bank Up), conducted interviews and demonstrations, followed up with vendor references, and conducted proposal clarifications with the top three proposers. The evaluation panel selected the proposal submitted by CPI as the top-ranked proposal. Following the evaluation process, City staff negotiated terms and conditions and a detailed scope of work, set forth in the proposed agreement.

Financial Considerations: Funding for the base period of this contract is included in the FY2014/15 Department of Utilities budget. Approval of the one-year term extensions will be contingent on whether funding is available for this purpose in the approved budget for the applicable fiscal year. The negotiated contract reflects a significant reduction in the cost of lockbox and pay station payment processing and courier services, while providing enhanced services and features. The current average annual cost is \$237,168 for the Bank of America and Bank Up payment processing services, in addition to the related courier service charges. The proposed contract includes minimal fixed increases in pricing over the five-year period, in addition to an allowance for potential technology enhancements for the optional years, with a total not-to-exceed amount of \$400,000.

The agreement provides for a base period beginning from the date of execution of the agreement through March 31, 2016, with the option for the City to extend the agreement for four additional one-year terms.

<u>Years</u>	<u>Amount</u>
Base period (through March 31, 2016)	\$ 73,830
Option Year 2 (4/1/2016 – 3/31/2017)	\$ 76,315
Option Year 3 (4/1/2017 – 3/31/2018)	\$ 80,874
Option Year 4 (4/1/2018 – 3/31/2019)	\$ 83,203
Option Year 5 (4/1/2019 – 3/31/2020)	<u>\$ 85,778</u>
Total Not to Exceed Amount:	\$ 400,000

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

BACKGROUND

The City currently has two lockbox service providers, Bank of America and Bank Up. Bank of America processes all customer payments that are mailed to the City's post office box. Bank Up processes all payments that are collected at local Bel Air Market pay stations. Both vendors submit separate daily payment files to the City for posting to the general ledger and customer accounts via the Department of Utilities' Customer Information System (CIS) used for billing. City staff must validate each payment file separately.

Bank of America is the City's bank, and has provided lockbox service for the processing of utility payments for over 15 years. The City's lockbox service has not kept up with technology changes and it appears that Bank of America's new technology enhancements and the cost for new services are not competitive. In addition, the Bank of America lockbox service location was changed from San Francisco to Los Angeles in August 2012, requiring the City to use a courier to fly payments to Los Angeles daily. The Los Angeles cut-off time for same-day processing of payments is earlier than the cut-off time for the San Francisco lockbox. The change in courier service and the cut-off time has resulted in at least a two-day processing delay of payments from the previous lockbox location.

The City also incurs daily costs to receive boxes of the original bill coupons processed, along with reports. Previously, these boxes were delivered by the courier that drove to and from San Francisco. The City's costs for courier services increased from approximately \$1,400 per month to \$3,300 per month. Bank of America has covered the cost of delivery of mail from Sacramento to Los Angeles on a temporary basis, as a result of the location change. Once Bank of America no longer covers this cost, the City's cost for courier service will double. The lockbox service provided by Bank of America is not a condition of the City-wide contract with Bank of America, and the Department may choose another service provider.

The Bank Up contract, to process payments received at local pay stations, was implemented in 2011. Bank Up's contract includes imaging of both payments and bill coupons in a proprietary database. Bank Up has a separate courier that collects payments from the pay stations. The courier service is approximately \$660 per month. Bank Up also electronically deposits the City's payments to the City's bank account with Bank of America on a daily basis. The Bank Up contract will be expiring on March 31, 2015. While contracting with Bank Up the City achieved some efficiencies with the use of new technology for electronic deposits and imaging.

The proposed contract with CPI will enhance technology and processing times with imaging of bill coupons and payments, electronic reports on demand, and the electronic processing of payment exceptions. In addition, the proposed vendor will also provide courier service for collection of payments from the City’s post office box and local pay stations. Currently, Bank of America and Bank Up return all payment exceptions to the City via mail, such as payments that are out of balance with multiple bill coupon(s), and payments submitted without a bill coupon. The new contracted service will include an online payment exception portal, in which images of the payments and coupons will be made available for viewing electronically. The decision on how to apply a payment to a single or multiple accounts will be made online by a City representative and the new lockbox provider will process the payment accordingly.

The new contract also includes an authentication process that will validate customer account details with check payments that are submitted without a bill coupon, which will significantly reduce the number of these payment types that require manual review or processing by the City. The City currently receives an average of 75 payment exceptions per day that are due to banks that issue paper checks for home banking customers, in which a bill coupon is not enclosed. In addition, the current delays experienced in processing payments and payment exceptions should no longer occur due to CPI being local and its ability to process payment exceptions electronically.

The total not to exceed amount of the new contract includes payment processing, imaging services, courier service, maintenance fees and other professional services, including the implementation of changes as needed.

<u>Service</u>	<u>Amount</u>
Payment Processing & Imaging Service	\$ 309,411
Courier Fees	\$ 11,160
Maintenance Fees	\$ 9,000
Other Services	<u>\$ 70,429</u>
Total Not to Exceed Amount	\$ 400,000

PROJECT #:
PROJECT NAME: UTILITY PAYMENT LOCKBOX PROCESSING
DEPARTMENT: UTILITIES
DIVISION: BUSINESS & INTEGRATED PLANNING

CITY OF SACRAMENTO

NONPROFESSIONAL SERVICES AGREEMENT

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

*Check Processors, Inc.
1010 Hurley Way, Suite # 185
Sacramento, CA 95825
Phone #: 916-648-8097 / 916-718-1898*

("CONTRACTOR"), who agree as follows:

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

Invitation to Bid	Contractor's Bid Proposal Form
Instructions to Bidders	Workers' Compensation Certificate
Local Business Enterprise (LBE) Requirements	Certificate(s) of Insurance
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Declaration of Compliance (Equal Benefits Ordinance)	
Declaration of Compliance (Living Wage Ordinance)	

- 2. **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.

- 3. **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.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing 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.
5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Wage Requirements.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.58, Living Wage. The requirements of Sacramento City Code Chapter 3.58 are summarized in Exhibit E. The CONTRACTOR is required to sign the attached Declaration of Compliance (Living Wage Ordinance) to assure compliance with these requirements. In addition, for services that constitute "public works" under California Labor Code section 1720 et seq., payment of the prevailing rate of wages is required as indicated in Exhibit D, Section 4 of this Agreement. If both prevailing wage and living wage requirements apply, CONTRACTOR shall pay the higher of the two rates.
7. **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 F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
8. **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.
9. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

ATTEST:

City Clerk

APPROVED TO AS FORM:

City Attorney

Attachments

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

CONTRACTOR:

Check Processors, Inc.
NAME OF FIRM

45-2745961
Federal I.D. No.

33993030
State I.D. No.

1020909
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

Hal Beswick, Vice President/Business Development
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

DECLARATION OF COMPLIANCE
Living Wage Ordinance

Name of Contractor:
Check Processors, Inc.

Address:
1010 Hurley Way, Suite # 185, Sacramento, CA 95825

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

1. Contractor has read and understands the Living Wage Requirements (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Living Wage Ordinance codified at Chapter 3.58 of the Sacramento City Code (the "Ordinance"). If required by the Ordinance, Contractor will pay not less than the minimum compensation specified in the Ordinance to Contractor's employees, for all time spent performing any work under this Contract.
3. If the amount of this Contract is less than \$100,000, as a condition of receiving this Contract, Contractor will notify the City of Sacramento ("City") in writing if the aggregate value of this Contract and of any other Nonprofessional Services contract(s) covered by the Ordinance that the City has awarded to Contractor within the previous 12 months, is \$100,000 or more.
4. Contractor acknowledges and agrees that the Requirements, the Ordinance and this Declaration shall constitute part of this Contract, and that these provisions shall govern in the event of any conflict with any other provisions of the Contract.
5. Contractor further acknowledges and agrees that any violation of the Requirements or the Ordinance constitutes a material breach of this Contract, and that, if such a breach occurs, the City will be authorized to terminate the Contract, and pursue all available legal and equitable remedies.
6. If requested by the City, Contractor will promptly submit certified payroll records to the City, for itself and/or for Contractor's subcontractor(s), as requested by the City, and Contractor will take any other steps as may be required by the City to determine whether Contractor's subcontractor(s) or Contractor have complied with the Requirements and the Ordinance.
7. Contractor will require all of its subcontractors who are covered by these requirements to comply with the Requirements and any additional requirements that may be specified in the Ordinance, and Contractor will include these requirements in all subcontracts covered by the Ordinance.

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 the Ordinance by Contractor or by any subcontractor retained to perform work or provide services under this Contract.

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.

 _____

Date: 3/11/2015 _____

Signature of Authorized Representative

Print name: Hal Beswick _____

Title: Vice President/Business Development _____

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor:
Check Processors, Inc.

Address:
1010 Hurley Way, Suite # 185, Sacramento, CA 95825

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

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

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed

discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for

future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

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



Signature of Authorized Representative

Date: 3/11/2015

Print name: Hal Beswick

Title: Vice President/Business Development

EXHIBIT A

NONPROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Shelle Smallwood
1395 35th Avenue
Sacramento, CA 95822
(916) 808-4928 / ssmallwood@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:

*Hal Beswick/Vice President/Business Development
1010 Hurley Way, Suite # 185
Sacramento, CA 95825
(916) 648-8097 / hal.beswick@checkprocessors.com*

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

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

3. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services. The initial term for this Agreement is the period beginning from the date of award through March 31, 2016 (the "base year"). The CITY in its sole discretion may renew this Agreement for subsequent one-year periods (April 1 – March 31), up to a total of four one-year renewal periods.

4. **Prevailing Wage Requirement.**

The services provided under this Agreement constitute "public works" under California Labor Code section 1720 *et seq.* and are either **[check one if applicable]**:

_____ Construction work in an amount exceeding \$25,000; or

_____ Alteration, demolition, repair, or maintenance work in an amount exceeding \$15,000.

If either line is checked above, this Agreement is subject to the provisions of Sacramento City Code section 3.60.180 which requires, among other things, that CONTRACTOR pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. If payment of the prevailing rate of wages is required, CONTRACTOR and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by CITY. CONTRACTOR is responsible for compliance with Sacramento City Code section 3.60.180, and shall include these requirements in every subcontract or subagreement. This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

ATTACHMENT 1 TO EXHIBIT A
NONPROFESSIONAL SERVICE AGREEMENT
SCOPE OF SERVICE

1. General:

CONTRACTOR shall provide services and support applications in accordance with the business requirements of the CITY to provide utility lockbox payment processing and courier services. The CONTRACTOR shall ensure its services and deliverables meet the scope of services and business and technical requirements specified in the CITY's Request for Proposal (RFP) #P15141631011, incorporated herein by this reference, and customize and support applications to provide the following functions:

1. General Lockbox Service
2. Electronic Payment Exception Processing
3. Payment Batching
4. Correspondence Batching and Delivery
5. Daily Payment File Data Transmission
6. Secure FTP site maintained by CPI
7. Cash Image Letter Depository Service
8. Electronic Document and Imaging of front and back of payments and coupons
9. Customized Archive Database
10. Payment Authentication
11. Postmark Date Capture
12. Customized Reporting
13. Courier Service

2. Definitions:

Within the Scope of Services, the term Biller is used interchangeably with CITY. The term User refers to CITY staff.

3. Service Description:

A. Payment Processing / Lockbox

CONTRACTOR shall follow the batching and payment processing requirements set forth in the RFP. Payment file submissions shall be uploaded by the CONTRACTOR to a secure FTP site daily by or before the 2:00 p.m. cut-off time, based on Pacific Standard Time (PST). The FTP site will be provided and maintained by the CONTRACTOR. Payments received from local pay stations shall be processed by the CONTRACTOR under a separate batch number(s) than payments mailed to the CITY's Post

Office box. All payments shall be submitted in a single data file. All payment exceptions shall be submitted by the CONTRACTOR to the CITY electronically with the ability of the CITY to make decisions online on payment processing. All payment exceptions that are confirmed by the CITY for processing by 1:00 p.m. shall be included in the same day's daily payment file data submission. All payment exceptions identified for return shall be couriered to the CITY on the next business day.

B. Document Search, Retrieval and Archive Database/Portal

CONTRACTOR will configure, design and host the document imaging system and related infrastructure and document archival and retrieval applications, including data fields, templates and composition logic, necessary for the CITY to search for and view electronic replicas of customer payments and bill coupons for a rolling period of 36 months. Any storage that continues after expiration of this Agreement shall result in a flat monthly fee.

The CONTRACTOR shall maintain, according to specifications agreed to by the CITY, the parameters for all components related to the document archival/retrieval application, which will be hosted at CONTRACTOR's redundant and secure data center(s).

C. Payment Process Reporting

The CONTRACTOR shall develop and support customized reporting under this Agreement, which includes a daily payment summary report by source type, or location, a detailed summary report, a month to date summary report and the capability to run ad-hoc detailed reports using a date range and selection of one or more source or locations for a rolling period of at least 36 months. Detailed reports shall include, but not be limited to, batch numbers and the payment source type for each transaction. In addition, the CONTRACTOR shall develop customized reports for payment exceptions, including a daily payment exception report, a detailed payment exception report, a month to day payment exception summary report and the capability to run ad-hoc detailed exception reports using a date range. All reports will have the capability to be downloaded to MS Excel and PDF.

D. Electronic Payment Exception Processing

The CONTRACTOR shall develop and support the ability for electronic payment exception viewing and decision making in the online portal, as outlined in the RFP. In addition to the email notifications of each payment exception communicated, the CONTRACTOR shall display the payment exceptions in a list format, which allows for a hyperlink access to the related image(s) of a specific payment selected from the list. The view shall display both the check(s) and bill coupon(s) associated to a payment transaction. The view shall also display decision boxes under each bill coupon and/or check, which allows the CITY the ability to populate an Account Number, Dollar Amount, or Note. A checkbox will also be available for the CITY to select when a payment should be rejected and returned to the CITY. As exceptions are completed, indicating a decision has been made and submitted, the exception item shall automatically be removed from the exception list, and placed in a completed or worked exception list. Exceptions not resolved by the CITY prior to the 1:00 p.m. deadline, or prior to the

CONTRACTOR completing and running the daily file for payments processed, shall not be processed and remain as an exception in the portal until the CITY completes the online decision making.

E. Payment Authentication

The CITY shall provide the CONTRACTOR a daily authentication file via upload to the CONTRACTOR'S secure FTP site. The CONTRACTOR will utilize this file to assist in validating and matching customer details with payments to minimize payment exceptions. The CONTRACTOR shall ensure any validation decisions made by the CONTRACTOR are based upon a match of at least three or more customer criterion in order to avoid misapplied payments. The CONTRACTOR shall work with the CITY to address any issues related to payments misapplied to incorrect customer accounts, which may include but is not limited to modifying business rules, modifying the authentication file or discontinuing use of the authentication file.

F. Reconcile

The CONTRACTOR shall ensure that all payments processed for the day are in balance with the bill coupons associated to the accounts, which may include a customer's handwritten payment amount. The CONTRACTOR shall not submit invalid payments, such as a zero dollar payment or duplicate payments associated to any customer account, in the daily payment file submitted to the CITY.

The CONTRACTOR shall reconcile the payment(s) received from each pay station with the pay station log prior to processing the payments to ensure the payments are not out of balance. Any out of balance shall be reported to the CITY immediately, and the CONTRACTOR shall hold the payments until direction is received by the CITY on how to proceed.

G. Implementation and Configuration

Vendor must have the willingness and ability to process changes and enhancements to payment processing or deposits in a timely manner. The CONTRACTOR shall work with the CITY to develop an acceptance test plan to mitigate any adverse consequences associated with any changes.

Implementation and configuration may include:

- Needs Analysis and Joint Definition Sessions
- Statement of Work and Requirements building
- Project Management and Project Plan construction and maintenance
- Set-up and testing of email communications
- Design and creation of electronic reports
- Set-up and customization of exception portal
- Set-up and coding of business rules
- Compliance testing of OCR line (lockbox processing)
- Set-up and testing of the CITY's authentication file
- Set-up and testing of the Cash Image letter with the CITY's bank
- Set-up, customization and testing of the features in the online document image portal

CONTRACTOR shall develop and implement an online portal according to CITY specifications, including payment exception processing, prior to the start of the Agreement. All reporting capabilities must be completed within 30 calendar days of execution of this Agreement.

In the event the CITY should acquire a new banking institution or a Utility Billing or POS system in the future, the CONTRACTOR shall work with the CITY and its agents to incorporate all documents and automations necessary and perform testing.

In addition to the requirements set forth above, and in the RFP, the following customizations will be made to the online portal as part of the implementation:

Main Screen:

- Add a new Report button that will navigate to a screen that allows a user the ability to run existing reports or create a report as described in the payment process reporting section above.
- Set the session time-out to 30 minutes, at which time an inactive user will be logged out of the portal.
- Create a pop-up to notify a user at least five minutes prior to being timed-out. The pop-up shall allow a user to select "Ok" if the user would like to continue without being logged out.
- When a user logs out, or is timed out, the screen shall be reset to the main screen when the user logs in again. Previous screens or views shall not display when logging in again.
- Remove buttons and/or fields as determined by the CITY, due to non-use.
- Add a change password button/feature that allows a user to change their password after initial set-up by an administrator.
- Add an "Exception List" button on the main screen.

Search/View:

- Modify the search boxes as defined by the CITY, which may include adding or removing existing search fields in the portal.
- Add the ability to search by Batch number, Type – source/location, Service Address, in addition to other existing search fields defined by the CITY.
- Modify the fields displayed when search results are viewed, as defined by the CITY, which may include adding or removing existing fields in the portal.
- Add the ability to view the Type, or source/location of a payment, and Batch number.
- Create a unique payment source for payments received from local pay stations and payments mailed to the CITY's Post Office box. The pay stations source type shall be "PST". The payments received at the Post Office shall have a source type of "LBX".
- Add the ability to capture and view the postmark date of payment mailed to the CITY's Post Office box.

Exception Portal:

- Add an "Exception List" button on the main screen.

- Create an exception list that displays all exceptions in a text format, with specific fields/information displaying as defined by the CITY, when a user selects the Exception List button.
- Create the ability for a user to select a payment exception in the list and navigate to a screen that displays an image of both the payment(s) and bill coupon(s) associated to the payment transaction.
- Add a “View Completed Exceptions” button.
- Create a completed exception list that displays all exceptions completed and submitted on the current day.
- The exception list shall display the fields defined by the CITY, including but not limited to: Exception Date, Total Payment amount, and Account number, if known.
- Add a “Return to List” button at the top of the screen when viewing an image of an exception.
- Add a “View Next” button at the top of the screen when viewing an image of an exception.

H. Courier Service:

The CONTRACTOR will pick-up payments daily from three locations:

- U.S.P.S Post Office Box 2770 – 660 J Street, Suite 170, Sacramento, CA
- Bel Air Market #501 - 6231 Fruitridge Road
- Bel Air Market #514 - 7465 Rush River Drive

The CONTRACTOR will deliver all CITY correspondence enclosed an envelope, including but not limited to bill coupons that have the mailing address change form completed, completed auto-pay forms and attachments, cash payments and rejected payment exceptions to the CITY on a daily basis.

I. Other Terms and Conditions

Implementation Delay:

In the event CONTRACTOR fails to develop and implement the new services, features and/or modules in accordance with the schedule described in section A above, and to the extent CONTRACTOR’s delay is not caused by the CITY, the CITY shall receive a 20% discount off the daily billable rates for each respective process / system(s) for each day after the applicable deadline specified in section A above until CONTRACTOR completes development and implementation of the system(s) and the system(s) is/are functional as evidenced by successful use of the system(s) in a production environment.

General Performance Standards/Service Level Agreement (SLA):

Ultimately the CONTRACTOR shall be responsible for the entire operation of the system from acceptance and reconciliation of the payments, processing, support (tech / application), payment

exception notifications and update upon resolution received, through upload and submission of the daily payment file.

Incident Management

All incidents that occur and affect CITY directly and/or indirectly shall be managed to resolution by CITY. There will be ongoing communication of incidents from CONTRACTOR to CITY and shall be facilitated as follows:

- CITY can invoke incident management 7 X 24 based on the severity of the issue defined hereto.
- CONTRACTOR shall track incidents to ensure that they are resolved in a timely manner. Resolution may be in the form of a transfer to CITY's own support service where appropriate.
- CITY can request escalation of any incident to management of CONTRACTOR at any time.
- Incidents shall be communicated to all necessary parties as detailed in the contact lists agreed with CITY.
- CONTRACTOR shall classify the severity level of each incident in accordance with the Incident Response and Classification Standard described below.
- CONTRACTOR shall provide integrity and completeness to Incident records.

CONTRACTOR shall use all commercially reasonable efforts to respond to incident reports according to the following schedule:

Response Definition:

Action 1: Acknowledgment of receipt of error report

Action 2: Provide patch, workaround, temporary fix and documentation correction pages.

Action 3: Official file or object code fix, update and/or updated manuals or processes.

Incident Classification Definition:

FATAL: Fatal impact or errors preventing all useful work from being done as reasonably determined by CITY and CONTRACTOR.

SEVERE: Severe impact or errors, which disable major functions from being performed as reasonably, determined by CITY and CONTRACTOR.

DEGRADED: Degraded operations impact or errors disabling only certain non-essential functions as reasonably determined by CITY and CONTRACTOR.

MINIMAL: Include all other minor impacts or errors as reasonably determined by CITY and CONTRACTOR.

The expected timeline of a response for each incident classification is defined below. The CONTRACTOR will make every effort to adhere to the response timeline defined in the event of any system or processing error or issue.

Incident Classification	Action 1	Action 2	Action 3
Fatal	1 hour	1 business day	15 business days
Severe	1 hour	1 business day	30 business days
Degraded	1 hour	15 business days	45 business days
Minimal	1 hour	45 business days	As appropriate

Note: Business days are M-F, excluding national holidays (USA).

Incidents should be tracked via a work request or "ticket" that documents all correspondence through its entire "life cycle".

Notice for Planned Changes and Outages:

CITY and CONTRACTOR shall provide 72 hours notice for scheduled system maintenance; for regularly scheduled maintenance the window is established as after 2:00 p.m. Monday through Friday, and all day on weekends.

Based on the redundant system configuration, the system will provide 99% system uptime. Events that are beyond the control of CONTRACTOR, such as web brownouts, payment processor unscheduled downtime, and scheduled maintenance are not included.

Support Hours:

CONTRACTOR shall provide a dedicated support individual and customer support to CITY 7:00 a.m. to 5:00 p.m. PST, excluding holidays. Customer support required at another time will be based upon the severity of the problem. Contact will be made in accordance with the support defined in the Incident Classification Standard paragraph.

Application and Technology Upgrades:

Planned system upgrades will be reported to CITY via an e-mail notice. Upon giving reasonable advance notice to CITY, CONTRACTOR, at its expense, may make any agreed modifications, changes, adjustments or enhancements to the Services which is considered to be suitable or necessary.

Quality Assurance:

The CONTRACTOR will be responsible for all aspects of quality assurance and quality control. They will ensure that all work performed shall be of first class quality. Delayed payment processing or deposit, misapplied payments, incorrect batching, and erroneous data file submissions, are some, but not all, examples of unacceptable work. The CONTRACTOR shall have a quality control program in place to ensure the lockbox instructions are followed and timely processing of payments occurs.

The quality control program should facilitate the logging, tracking and review of all items, from the time they enter the CONTRACTOR's system through the time they are fully processed satisfactory and submitted to the CITY and the CITY's bank.

The CITY may, from time to time, require an inspection tour of CONTRACTOR'S facilities at the location where the work on this Agreement will be accomplished. The CITY reserves the right to inspect the CONTRACTOR's capability to perform the services required.

Any errors that are not remedied by the CONTRACTOR's quality control process, involving 100 or more payments, will incur a penalty credit on the invoice pertaining to the service period in the amount of \$0.05 per payment. This penalty shall also include exceptions uploaded to the online system and the resolution of the exceptions involving 25 or more payments being delayed beyond the CONTRACTOR's service level commitment.

Corrections that are necessary, as a result of errors made by the CONTRACTOR, related to misapplied payments and insufficient fund charges to customers shall be corrected at the CONTRACTOR's expense, including but not limited to labor hours, fees, etc. All data and processing problems, such as delayed payment processing, delayed files and deposits, and any other concerns that may impact service level commitments and the instructions outlined in this RFP or this Agreement shall be reported to the CITY's Utility Billing Manager immediately upon identification.

Identity Theft Prevention:

CITY's utility service accounts are treated as "covered accounts" under the Red Flags Rule, pursuant to the Federal Trade Commission's "Red Flags Rule" (Part 681 of Title 16 of the Code of Federal Regulations), which implements Sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA). Service providers, who perform any activity in connection with one or more utility service accounts, must ensure they perform their activities in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.

The CONTRACTOR is required to have its own Identity Theft Prevention program and/or policies and procedures in place to address identity theft. The program must be in compliance with the CITY's program and adhere to the reporting of any red flags to the CITY's Billing Manager.

The CONTRACTOR is responsible for thoroughly screening all employees who come into contact with CITY data to ensure CITY data will not be at risk. Once any CITY data file has been transferred and received by CONTRACTOR, CONTRACTOR shall be deemed a custodian of the data file and shall be responsible for the protection and safeguarding of the CITY's data file and the information contained therein. In the event of a security breach or compromise of CONTRACTOR's data system, CONTRACTOR shall promptly notify the CITY's Information Technology Principle Security Officer at (916) 808-1569 and the Department of Utilities Program Manager at (916) 808-5988 by phone and follow-up in writing of the incident and the actions CONTRACTOR has undertaken or will undertake to resolve the security breach issue. CONTRACTOR shall be liable for any damages resulting from a security breach of the CITY's data files.

Facility Location, Disaster Recovery, and Security:

The CONTRACTOR shall have a disaster recovery plan to insure that all processing can be completed within the CITY's time frames and requirements. The disaster recovery plan shall include but shall not be limited to equipment, personnel, facilities, and transportation back-ups in order to continue service specified under this Agreement in the event of a disaster or major equipment failures. It is extremely important to the CITY that all precautions are taken to secure CITY assets/data. At a minimum provide and ensure that:

- a. Original documents must be stored in a secure area.
- b. CONTRACTOR's facility shall have automatic fire protection/suppression systems to protect CITY data within the facility.
- c. CONTRACTOR's facility shall have security/intrusion alarms.
- d. CONTRACTOR has a disaster recovery plan.

In the event of a disaster, the CONTRACTOR must immediately notify the CITY of the event and any anticipated delays or impacts to the services provided to the

CONTRACTOR represents and warrants that it will maintain the confidentiality and privacy of CITY's data file regardless of where the data file is stored or housed. CONTRACTOR shall ensure that its data security practices are current with industry standards. CONTRACTOR is solely responsible for compliance with all laws, regulations and judicial and administrative decisions applicable to CONTRACTOR as a provider of data processing services, including, but not limited to, California's Database Security Breach Notification Act (SB 1386) and General Standards for Businesses (AB 1950).

Rights in Data

Upon termination or expiration of this Agreement for any reason, all CITY property, including but not limited to source codes, formats and related documentation and instructions which are in the possession of the CONTRACTOR shall be immediately delivered to the CITY.

The CITY shall have unrestricted access to all CITY files in CONTRACTOR's possession, and the CONTRACTOR shall not deny access to the CITY for any reason.

Notification of Material Changes in Business:

CONTRACTOR agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the CITY of the changes.

CONTRACTOR also agrees to immediately notify the CITY of any condition which may jeopardize the scheduled delivery or fulfillment of CONTRACTOR's contractual obligations to the CITY.

Subcontracts and Assignments:

No portion of the work or services to be performed and supplied hereunder, except for the purchase of necessary goods, equipment and materials for the processing of payments through required third party entities, may be subcontracted in whole or in part, nor assigned by the CONTRACTOR, nor may assignment of any money due or to become due the CONTRACTOR under this Agreement be made, without the prior written consent of the CITY. Where authorized by the CITY, the CONTRACTOR shall select all subcontractors and suppliers on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Agreement.

The CONTRACTOR must be able to handle reasonable increases in volume and adjustments to programming specifications from the current levels. The CITY will work closely with the CONTRACTOR during the conversion and implemented process to insure accuracy in CONTRACTOR programming tasks. Other methods of electronic data transmission, including the Internet, may be utilized upon mutual agreement between the CONTRACTOR and the CITY.

Drug-Free Workplace Policy

CONTRACTOR shall implement a drug-free policy that informs its employees of the dangers of drug abuse and that maintains a drug-free workplace. If, in the performance of work under this Agreement, any employee of the CONSULANT exhibits unacceptable behavior that may be related to use of drugs or alcohol, the CITY reserves the right to discuss the employee's behavior with CONTRACTOR. If the unacceptable behavior persists, the CITY may require that the employee be removed from all work under this Agreement.

EXHIBIT B

NONPROFESSIONAL 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 \$400,000 for the maximum five year term of this Agreement, consisting of the following maximum amounts for each one year term: \$73,830 for the base year; \$76,315 for Option year 2; \$80,874 for Option year 3; \$83,203 for Option year 4; and \$85,778 for Option year 5.
- 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
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from

CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*City of Sacramento
Department of Utilities
1395 35th Avenue
Phone: (916) 808-4928 / (916) 808-1400
Attn: Shelle Smallwood*

5. **Billing Disputes.** Billing disputes will be addressed on an individual invoice basis. The burden of proof of accurate billing shall be on the CONTRACTOR. Upon presentation and verification of the information provided by the CONTRACTOR, the CITY will review all records and make a final determination and present its finding to the CONTRACTOR.
6. **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.
7. **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.
8. **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

NONPROFESSIONAL SERVICE AGREEMENT

FEE SCHEDULE / MANNER OF PAYMENT

The rates paid for CONTRACTOR'S Services are specified below. All rates are fixed for the maximum five-year Agreement term, except for CONTRACTOR's Payment Transaction Processing Fees and Monthly Courier Service charges, which may be increased on an annual basis for Option years 3 through 5, if CONTRACTOR provides written notice of the increase to the CITY Representative not less than 90 days prior to commencement of the applicable Option year. These increases to the Payment Transaction Processing Fees and Monthly Courier Service charges shall not-to-exceed the amounts specified below for Option years 3, 4, and 5, provided that any annual increases to the Payment Transaction Processing Fees in Option years 3, 4, or 5 shall not exceed the increase in the Consumer Price Index for the 12 month period preceding CONTRACTOR's written notice to CITY.

ONE TIME CHARGES	
Set-up Fee	No Charge
MAINTENANCE FEE	
Monthly Fee	\$150.00
PROGRAMMING FEE - MODIFICATIONS/ ENHANCEMENTS	
Hourly	\$75.00
PAYMENT TRANSACTION PROCESSING FEES	
Year 1	\$0.1000
Year 2	\$0.1000
Year 3	\$0.1025
Year 4	\$0.1050
Year 5	\$0.1076

Note: The fee above applies to any one of the following:

- Check and bill coupon with scanline
- Check and bill coupon without scanline
- Check only with no bill coupon/virtual coupon created
- Bill coupon only
- Letter or correspondence scanned and imaged

Processing Fees include opening mail, sorting payments and batches, scanning, processing, and imaging check payments and bill coupons, and generating and uploading the daily

payment file for the City.

Payments with multiple coupons enclosed will be charged a processing fee for each additional coupon, after the first coupon.

Payments with multiple checks enclosed will be charged a processing fee for each additional check, after the first check.

EXCEPTION ITEM PROCESSING	
Per Item Fee	No Charge
MONTHLY COURIER SERVICE	
Year 1	\$150.00
Year 2	\$150.00
Year 3	\$180.00
Year 4	\$210.00
Year 5	\$240.00
Note: Courier service includes pick-up from three locations and drop-offs at the City of Sacramento each business day.	
WEB PORTAL - IMAGE ARCHIVE/SEARCH	
Search/View/Retrieve	No Charge
Reports	No Charge
Note: Images will be available for 3 years from the original date scanned/processed.	
SMART DATABASE / AUTHENTICATION	
Per Item Fee	No Charge
EXCEPTION ITEM PROCESSING	
Scan/View/Complete	No Charge
POSTMARK DATE CAPTURE FEE	
Per Payment Transaction	\$0.01
CASH IMAGE LETTER DEPOSITORY SERVICE	
Per Image / File	No Charge
CHECK STORAGE & DOCUMENT SHREDDING	
Per Item Fee	No Charge
Note: Checks will be destroyed after 15 days. Envelopes and coupons will be destroyed as processed and/or scanned.	

ENVELOPE STORAGE & SHREDDING

Per Envelope	\$0.005
Retrieval	\$5.000
Note: Upon request, envelopes may be stored up to 60 days, and then recycled at the cost noted. A retrieval cost will apply to each retrieval request after 5 retrievals, provided at no cost, each month.	

EXHIBIT C

NONPROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

 X Not furnish any facilities or equipment for this Agreement; or

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

**EXHIBIT D
NONPROFESSIONAL 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 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. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

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 Workers' 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)

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) 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 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 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 Contract or Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.

- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

EXHIBIT E
LIVING WAGE REQUIREMENTS
(Nonprofessional Service Agreement)

The Living Wage Ordinance

The City of Sacramento's Living Wage Ordinance (the "LWO") is codified as Chapter 3.58 of the Sacramento City Code. The LWO requires certain firms that enter into agreements or contracts (all subsequent references to a "contract" or "contracts" will refer to both contracts and agreements) to provide certain services to or for the CITY, to pay a specified minimum level of compensation to their employees for time spent performing any work on the CITY contract. The LWO also applies to certain subcontractors.

The LWO applies to contracts entered into, amended, or renewed or extended at the CITY's discretion, on or after March 1, 2004 (the "LWO Effective Date").

Contracts and Contractors Covered by the LWO

Determining whether the LWO applies to a specific CITY contract, contractor or subcontractor, depends on whether the contract, contractor and/or subcontractor meet the criteria specified in the LWO for contract type, contract amount, contractor size (# of employees), subcontract amount and subcontractor size (# of employees). These criteria are summarized below.

Contract Type

The LWO applies only to contracts for Nonprofessional Services. Under the LWO, this includes contracts for any services of a nonprofessional character, including but not limited to tree trimming services, repair services for motor vehicles and office equipment, vehicle towing, and security services.

The LWO does not apply to: (1) Incidental services, such as delivery, installation or maintenance, that are provided under contracts for the purchase or lease of equipment, supplies, or other personal property; (2) contracts that are subject to CITY, state, or federal prevailing-wage requirements; (3) contracts for professional services (including but not limited to services rendered by engineers, architects, auditors, banks, consultants, actuaries and attorneys); and (4) contracts with nonprofit corporations that are organized under section 501 of the Internal Revenue Code and have fewer than 100 employees, whether full or part time.

Contract Amount

The LWO applies to contracts entered into or amended after the LWO Effective Date that provide compensation from the CITY of \$100,000 or more. In addition, the LWO applies to a contract entered into or amended after the LWO Effective Date that, by itself, does not reach this amount, if the aggregate value of that contract and of any other Nonprofessional Services contracts covered by the LWO that the CITY has awarded to the same person or firm within the previous 12 months, is \$100,000 or more. IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE WHETHER THIS AGGREGATE VALUE IS \$100,000 OR MORE, AND TO NOTIFY THE CITY IN WRITING WHENEVER THIS IS THE CASE.

Contractor Size

The LWO only applies to a contractor that has at least 25 employees, working either full or part time. The number of employees that a contractor has is determined by adding the contractor's employees and the employees of any other person or entity deemed to be a "Related Person" under the LWO.^a

Subcontract Amount

The LWO applies to a subcontractor providing services under a covered contract if the amount of the subcontract is at least 25 % of the contract amount, without regard to the number of employees the subcontractor has.

Subcontractor Size

The LWO also applies to a subcontractor providing services under a covered contract if the subcontractor has at least 25 employees, working either full or part time, whether or not the amount of the subcontract is at least 25 % of the contract amount.

Payment of Living Wage to Covered Employees

If a contractor or subcontractor meets the criteria specified in the LWO for contract type, contract amount, contractor size, subcontract amount and/or subcontractor size, the contractor or subcontractor is deemed to be a "Covered Employer" under the LWO. The LWO requires a Covered Employer to provide specified minimum compensation to its employees who perform work directly related to the CITY contract (these employees are called "Covered Employees" under the LWO), for all hours the Covered Employees perform under the CITY contract.^b

The minimum compensation required is as follows:

^a The LWO provides that a person or entity is a Related Person when any of the following circumstances exists:

- (1) The person or entity and the contractor are both corporations, and (i) share a majority of members of their governing boards, or (ii) have two or more officers in common, or (iii) are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation's voting power), or (iv) are in a parent-subsidary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation's voting power); or
- (2) The person or entity otherwise controls and directs, or is controlled and directed by, the contractor, as determined by the City Manager.

^b A Covered Employee includes full-time, part-time, contingent, contract and temporary employees, but does not include: (1) individuals who participate in job-training-and-education programs that have, as their express purpose, the provision of basic job skills and education to participants, with the goal of earning a high-school-equivalency diploma and permanent employment; (2) student interns; (3) individuals participating in specialized-training programs; and (4) an employee whose term and conditions of employment are governed by a bona fide collective-bargaining agreement containing an express waiver of the LWO.

- (1) If health benefits are provided to Covered Employees and the Covered Employer's contribution for the benefits is at least \$1.50 for each hour, then the rates are as follows:
 - (a) During 2007, the greater of \$10.00 an hour or \$9.00 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.
 - (b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

- (2) If health benefits are not provided to Covered Employees or if health benefits are provided but the Covered Employer's contribution for the benefits is less than \$1.50 for each hour, then the rates are as follows:
 - (a) During 2007, the greater of \$11.50 an hour or \$10.50 adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1, 2004, through December 31, 2006.
 - (b) For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for All Urban Consumers, San Francisco/Oakland/San Jose area (1982--1984=100) from January 1 through December 31 of the immediately preceding year.

Notification to Covered Employees

The LWO requires a Covered Employer to give each existing employee and (at the time of hire) each new employee a copy of the following written notification:

This company may enter into a contract to perform services for the City of Sacramento. If you work on such a contract, then you are entitled to be paid a living wage for each hour so worked. For more information, see Chapter 3.58 of the Sacramento City Code, which can be viewed at www.cityofsacramento.org.

The LWO requires the above notification to be provided in each language spoken by 10% or more of the Covered Employer's workforce.

The LWO also requires a Covered Employer to inform all employees of their possible right to the federal Earned Income Credit (EIC), and to make available to those employees any forms required to secure advance EIC payments from the Covered Employer.

Subcontractor Compliance

A contractor is responsible for requiring all of its subcontractors who are covered by these requirements to comply with the provisions of the LWO, by including these requirements in all subcontracts covered by the LWO.

Other Provisions of the LWO

Use of Funds Paid Under CITY Contracts

Under the LWO, Covered Employers may not directly use CITY funds to persuade Covered Employees to support or oppose unionization, and Covered Employers may not directly use CITY funds to schedule or hold meetings related to union representation during the Covered Employees' working hours. These restrictions do not apply to expenditures made during good-faith collective bargaining or to expenditures required under bona fide collective-bargaining agreements.

No Reduction in Non-Wage Benefits

Under the LWO, Covered Employers may not fund any wage increases required by the LWO, nor shall Covered Employers otherwise respond to the enactment of the LWO, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of their employees.

No Retaliation

The LWO prohibits a Covered Employer from taking any adverse action against a Covered Employee because the Covered Employee does any of the following: (1) exercises or asserts his or her rights under the LWO; (2) informs or assists other Covered Employees concerning their rights and the Covered Employer's obligations under the LWO; (3) complains about the Covered Employer's failure to comply with the LWO; or (4) seeks to enforce the LWO.

No Reduction in Collective-Bargaining Wage Rates

The LWO does not require or authorize any Covered Employer to reduce wages set by a collective-bargaining agreement or required under any prevailing-wage law.

Violations and Monitoring

The LWO provides that any violation of the LWO by a CITY contractor constitutes a material breach of the contract, and authorizes the CITY to terminate the contract and pursue all available legal and equitable remedies. In order to monitor compliance, the LWO authorizes the CITY to require Covered Employers to verify their compliance with the LWO by submitting certified payroll records to the CITY, and to take such other steps as may be necessary for the CITY to determine whether the requirements of the LWO have been satisfied.

The LWO also includes provisions authorizing an employee or interested person to file a judicial action against a contractor or subcontractor for violation of the LWO.

Declaration of Compliance

To assure compliance with the LWO, any person or entity entering into a contract to provide Nonprofessional Services to or for the CITY, on or after March 1, 2004, is required to provide the CITY with a signed Declaration of Compliance in the form required by the CITY, prior to the CITY's execution of the contract. The Declaration of Compliance shall be signed by a duly authorized representative of the person or entity entering into the contract, and, when accepted by the CITY, shall constitute part of the contract.

Additional Information

- For a complete description of the LWO's provisions, refer to the LWO codified at Sacramento City Code Chapter 3.58. The Sacramento City Code is available on the internet at www.cityofsacramento.org.
- For more information on the LWO requirements and the CITY's LWO program, contact Procurement Services at 916-808-6240.

EXHIBIT F

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

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

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

DEFINITIONS

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

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

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation,

street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

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

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

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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