

**Meeting Date:** 6/16/2015

**Report Type:** Consent

**Report ID:** 2015-00541

**Title: Agreement: Provision of Legal Services to the Sacramento Public Library Authority Board**

**Location:** Citywide

**Recommendation:** Pass a Resolution 1) authorizing the City Attorney to execute a professional services agreement with the Sacramento Public Library for legal services from FY2015/16 through FY2017/18; and 2) authorizing the City Manager or his designee to recognize and move all revenue generated under the professional services agreement in excess of \$52,000 to the City Attorney's Automation CIP (A03000100) at the end of FY2015/16, FY2016/17 and FY2017/18.

**Contact:** Jerry Hicks, Supervising Deputy City Attorney, (916) 808-5346, Office of the City Attorney

**Presenter:** None

**Department:** City Attorney

**Division:** City Attorney

**Dept ID:**

**Attachments:**

1-Description/Analysis

2-Resolution

3-SPLA PSA

---

### **City Attorney Review**

Approved as to Form

Gerald Hicks

6/3/2015 5:20:18 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Sandra Talbott - 5/27/2015 11:08:51 AM

## Description/Analysis

**Issue Detail:** The Sacramento City Attorney's Office has provided legal counsel to the Sacramento Public Library Authority ("Authority") under contract from FY2009/10 through FY2014/15. Since the current contract will expire on 6/30/15, in April 2015, the Sacramento Public Library Authority ("Authority") issued a Request for Proposals for Library Authority Counsel. On May 28, 2015, after a formal selection process, the Authority Board approved the use of the Sacramento City Attorney's Office to provide counsel services to the Authority. This item seeks City Council approval to enter into a professional services agreement to provide legal services to the Authority from FY2015/16 through FY2017/18.

**Policy Considerations:** Provision of high quality cost effective professional services to the Authority will increase efficiency of Authority operations and benefit the community, thereby helping to achieve the City's goal of making Sacramento the most livable city in America.

**Economic Impacts:** None.

**Environmental Considerations:** Under the California Environmental Quality Act Guidelines, provision of legal services does not constitute a project and is therefore exempt from review.

**Sustainability:** Not applicable

**Commission/Committee Action:** At its May 28, 2015 meeting, the Authority approved the use of the Sacramento Attorney's Office to provide counsel services to the Authority.

**Rationale for Recommendation:** The Sacramento Public Library Authority, of which the City is a member agency, is in need of legal services. For the past five fiscal years the Sacramento City Attorney's Office has provided those services. Under the professional services agreement, a member of the City Attorney's Office serves as Authority Counsel, providing day-to-day legal advice and attending Authority Board meetings. The continued use of the City Attorney's Office will provide the Authority with high quality public agency legal services, thus meeting the need of a vital community asset – public libraries.

**Financial Considerations:** The Authority will pay the City \$4,800 per month (or \$57,600 for FY2015/16, FY2016/17 and FY2017/18) for up to 30 hours of legal services, with additional services in excess of the 30 hours per month billed at a rate of \$175 per hour. Under this professional services agreement, the City Attorney will return \$52,000 of the contract amount to the general fund, but is requesting that amounts over \$52,000 received be recognized and moved to the department's Automation CIP at the end of the FY2015/16, FY2016/17 and FY2017/18.

**Local Business Enterprise (LBE):** Not applicable.

## RESOLUTION NO. 2015-

Adopted by the Sacramento City Council  
June \_\_\_\_\_, 2015

### APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH THE SACRAMENTO PUBLIC LIBRARY AUTHORITY FOR PROVISION OF LEGAL SERVICES

#### BACKGROUND

- A. Pursuant to a Memorandum of Understanding (“MOU,” City Agreement 2009-0629), the City Attorney’s Office has been providing legal services to the Sacramento Public Library Authority (“Authority”) since July 1, 2009.
- B. The MOU expires on June 30, 2015.
- C. The City Attorney’s Office has offered, subject to City Council approval, its services to the Authority as follows: Authority would pay the City \$4,800 per month, for up to 30 hours of legal service, with legal services in excess of 30 hours per month billed and paid at \$175 per hour. The Library Director could request the City Attorney’s Office to provide assistance in labor negotiations. If the City Attorney agreed to provide assistance in labor negotiations, the hourly rate would be \$175 per hour. The term of the professional services agreement would be from July 1, 2015 through June 30, 2018.
- D. On May 28, 2015, after a competitive selection process, the Authority approved execution of a Professional Services Agreement with the City for use of the City Attorney’s Office.

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

- Section 1 The City Attorney is authorized to execute a Professional Services Agreement with the Sacramento Public Library Authority, attached to this Resolution as Exhibit A, for the provision of legal services in FY2015/16 through FY2017/18.
- Section 2 The City Manager is authorized to recognize and move all revenue generated under the Professional Services Agreement in excess of \$52,000 to the City Attorney’s Automation CIP (A03000100) at the end of FY2015/16, FY2016/17 and FY2017/18.

#### Table of Contents:

Exhibit A: Professional Services Agreement

PROJECT #:  
PROJECT NAME:  
DEPARTMENT:  
DIVISION:

SACRAMENTO PUBLIC LIBRARY AUTHORITY

**PROFESSIONAL SERVICES AGREEMENT \***

**THIS AGREEMENT** is made at Sacramento, California, as of June \_\_, 2015 by and between the **SACRAMENTO PUBLIC LIBRARY AUTHORITY**, a joint powers authority (“AUTHORITY”), and

*City of Sacramento  
915 I Street, Fourth Floor  
Sacramento, CA 95814  
(916) 808-5346 phone/(916) 808-7455 fax*

(“CONTRACTOR”), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to AUTHORITY 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 AUTHORITY and AUTHORITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) AUTHORITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation for them. AUTHORITY 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 AUTHORITY Board or the Library Director, as required by the Authority’s Procurement Policy.
2. **Payment.** AUTHORITY 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, AUTHORITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to AUTHORITY 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 AUTHORITY.

---

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

3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. AUTHORITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D 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.
5. **AUTHORITY Representative.** The AUTHORITY Representative specified in Exhibit A, or the Representative's designee, shall administer this Agreement for AUTHORITY.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**SACRAMENTO PUBLIC LIBRARY AUTHORITY**

A Joint Powers Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Rivkah K. Sass, Library Director

If over \$50,000, Board Action # and Date: \_\_\_\_\_

APPROVED TO AS FORM:

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

Initiated by: \_\_\_\_\_ Date: \_\_\_\_\_  
 NAME, POSITION

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
 NAME, POSITION

**CONTRACTOR:**

City of Sacramento  
NAME OF FIRM

\_\_\_\_\_  
Federal I.D. No.

\_\_\_\_\_  
State I.D. No.

\_\_\_\_\_  
Sacramento Business Op. Tax Cert. No. (if applicable)

TYPE OF BUSINESS ENTITY (*check one*):

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

By: \_\_\_\_\_  
James Sanchez, City Attorney

APPROVED AS TO FORM:

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

ATTEST:

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

**Attachments**

- Exhibit A - Scope of Service**
- Exhibit B - Fee Schedule/Manner of Payment**
- Exhibit C - Facilities/Equipment Provided**
- Exhibit D - General Provisions**

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT**

**SCOPE OF SERVICES**

**1. Representatives.**

The AUTHORITY Representative for this Agreement is:

*Rivkah Sass/Library Director  
828 I Street  
(916) 264-2744  
rsass@saclibrary.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the AUTHORITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Jerry Hicks/Supervising Deputy City Attorney  
915 I Street, Fourth Floor  
Sacramento, CA 95814  
(916) 808-5346 phone/(916) 808-7455 fax  
jhicks@cityofsacramento.org*

All AUTHORITY 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 AUTHORITY shall be addressed to the AUTHORITY Representative.

**2. Insurance.** Insurance requirements are specified in Exhibit D, Section 11.

**3. Conflict of Interest Requirements.**

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

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

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

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

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

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

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

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

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

#### 4. Scope of Services.

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

5. **Time of Performance.** The services described herein shall be provided during the following period: July 1, 2015 through June 30, 2018, with two one-year options through June 30, 2020 at the AUTHORITY'S discretion.

## ATTACHMENT 1 TO EXHIBIT A

### SCOPE OF SERVICES

1. Provide general counsel, legal opinions and assistance to the Library Director and Library Staff.
2. Prepare and review contracts and legal documents relating to Authority activities and organizational needs.
3. Work with the Library Director, Clerk of the Board and key Library staff in preparing and reviewing reports, documents, contracts and other information to be presented at Authority Board meetings.
4. Participate in meetings as the legal representative of Sacramento Public Library Authority, including monthly Authority Board meetings.

## EXHIBIT B

### PROFESSIONAL SERVICES AGREEMENT

#### FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$190,800.
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 AUTHORITY.
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 AUTHORITY.
  - 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) AUTHORITY's Purchase Order Number if applicable
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
  - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. AUTHORITY 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:

Sacramento Public Library  
828 I Street  
Sacramento, CA 95814  
(916) 264-2753 Phone  
(916) 264-2852 Fax  
Attn: Finance Department

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by AUTHORITY in accordance with AUTHORITY's Supplemental Agreement procedures. AUTHORITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three 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 AUTHORITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide AUTHORITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify AUTHORITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by AUTHORITY arising out of CONTRACTOR's breach of this Section 7.

## Attachment 1 to Exhibit B

### Billable Rates

SERVICE	FY2015/16 – 2017/18
General Legal Counsel, contracts preparation and review, Authority Board preparation and review, meeting participation (Authority Board and Authority staff).	\$ 4,800 per month flat fee for first 30 hours \$175 per hour for each hour over 30 hours
Labor Negotiations Counsel	\$175/hr.



**EXHIBIT D**  
**PROFESSIONAL SERVICES AGREEMENT**

**GENERAL PROVISIONS**

**1. Independent Contractor.**

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of AUTHORITY. AUTHORITY 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 AUTHORITY harmless from any and all claims that may be made against AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY does not require that CONTRACTOR use AUTHORITY facilities, equipment or support services or work in AUTHORITY 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 AUTHORITY 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, 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 devote time or effort to the crafting or dissemination of substandard puns to the other party's detriment. 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 AUTHORITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of AUTHORITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind AUTHORITY to any obligations whatsoever.

**5. Conflicts of Interest.**

A. 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 AUTHORITY 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 AUTHORITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of AUTHORITY at all times during the performance of this Agreement.

B. The City Attorney of the CONTRACTOR serves as legal counsel to the City of Sacramento government and all officers, departments, boards, commissions and agencies thereof and has such other powers and duties as may be prescribed by state law and by ordinance or resolution of the city council. From time to time, the CONTRACTOR may have dealings, negotiations, and sometimes disputes (including litigation) with other public entities, including the AUTHORITY and the signatories to the Joint Powers Agreement creating the Authority. In consideration of the acceptance of the City Attorney's services, AUTHORITY agrees that the City Attorney's office and the individuals thereof, may represent CONTRACTOR in matters involving or related to the AUTHORITY, litigation adverse to the AUTHORITY, and other matters directly or indirectly adverse to the interests of the AUTHORITY, as long as these matters are not substantially related to the representation under this Agreement.

**6. Confidentiality of AUTHORITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use AUTHORITY 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 "AUTHORITY Information") that are valuable, special and unique assets of the AUTHORITY. CONTRACTOR agrees to protect all AUTHORITY 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 AUTHORITY Information to any third party without the prior written consent of AUTHORITY. In addition, CONTRACTOR shall comply with all AUTHORITY policies governing the use of the AUTHORITY network and technology systems. 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. AUTHORITY 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 AUTHORITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless AUTHORITY, 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. AUTHORITY shall make reasonable efforts to notify CONTRACTOR not later than ten days after AUTHORITY is served with any such claim, action, lawsuit or other proceeding, provided that AUTHORITY'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 AUTHORITY, whether received in connection with CONTRACTOR's proposal to AUTHORITY 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 AUTHORITY, AUTHORITY 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 AUTHORITY, satisfactory to the AUTHORITY Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by AUTHORITY 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 AUTHORITY and/or to enter into an agreement with AUTHORITY, 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY, 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 AUTHORITY, 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 AUTHORITY of the desire of AUTHORITY 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. AUTHORITY 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 AUTHORITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. AUTHORITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If AUTHORITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If AUTHORITY terminates this Agreement:
  - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to AUTHORITY copies of all information prepared pursuant to this Agreement.
  - (2) AUTHORITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, AUTHORITY 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 AUTHORITY such financial information as in the judgment of the AUTHORITY is necessary for AUTHORITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that AUTHORITY may have in law or equity.

**10. Indemnity.**

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify AUTHORITY, 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 AUTHORITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as

“Liabilities”), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of AUTHORITY, its agents, servants, or independent contractors who are directly responsible to AUTHORITY, 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 AUTHORITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of AUTHORITY’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 AUTHORITY.

It is understood and agreed by the CONTRACTOR that its liability to the AUTHORITY 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 AUTHORITY. If no work or services will be performed on or at AUTHORITY facilities or AUTHORITY Property, the AUTHORITY Representative may waive this requirement by selecting the option below:

Workers’ Compensation waiver of subrogation in favor of the AUTHORITY is not required. \_\_\_\_\_ (AUTHORITY Representative initials)

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

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

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions, or malpractice with limits of not less than one million (\$1,000,000) dollars. Professional Liability (Errors and Omissions) insurance:

Is \_\_\_\_\_ Is not \_\_\_\_\_ [check one] required for this Agreement.

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

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The AUTHORITY, 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 AUTHORITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

- (1) Except for professional liability, CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects AUTHORITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by AUTHORITY, 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 AUTHORITY, 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) AUTHORITY will be provided with thirty 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

AUTHORITY in writing prior to execution of this Agreement. The AUTHORITY understands that CITY is a self-insured public entity, and does not carry separate professional liability (commonly known as "malpractice" or "errors and omissions") insurance. For public liability and professional liability coverages, the CITY is self-insured pursuant to Government Code section 990; after the self-insured retention, the CITY has two excess policies for those types of losses.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish AUTHORITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the AUTHORITY representative named in Exhibit A. Copies of policies shall be delivered to the AUTHORITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The AUTHORITY 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY, 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 AUTHORITY 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 AUTHORITY 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 AUTHORITY to enter such litigation to protect the interests of AUTHORITY.

**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 AUTHORITY, in accordance with applicable provisions of the Sacramento Public Library Authority Joint Powers Agreement.

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 AUTHORITY 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. AUTHORITY 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 AUTHORITY. Any attempted or purported assignment without AUTHORITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
  - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
  - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the AUTHORITY.

Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the AUTHORITY.

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