

**Meeting Date:** 11/24/2015

**Report Type:** Consent

**Report ID:** 2015-01041

**Title: Agreement: Preferred Audio-Visual Provider for the Sacramento Convention Center**

**Location:** 1400 J Street, District 4

**Recommendation:** Pass a Motion: 1) awarding a Professional Services Agreement for preferred audio-visual services at the Sacramento Convention Center to Audio Visual Services Group, Inc., d.b.a. PSAV Presentation Services (hereinafter referred to as "PSAV") with an initial term from January 1, 2016, to December 31, 2018, with up to two additional one-year extension options; and 2) authorizing the City Manager, or his designee, to execute the Professional Services Agreement with PSAV.

**Contact:** Steven Sakakihara, Administrative Analyst, (916) 808-7146; Matthew Voreyer, General Manager, (916) 808-5503, Convention & Cultural Services Department

**Presenter:** None

**Department:** Convention & Cultural Services

**Division:** Conv Ctr Operational Admn

**Dept ID:**

**Attachments:**

1-Description/Analysis

2-Professional Services Agreement with Audio Visual Services Group, Inc. d.b.a. PSAV Presentation Services

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### **City Attorney Review**

Approved as to Form

Maila Hansen

11/17/2015 10:04:13 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Jody Ulich - 11/10/2015 8:50:42 AM

## **Description/Analysis**

**Issue Detail:** The current agreement for audio-visual (AV) provider services within the Sacramento Convention Center (Convention Center) expires on December 31, 2015. It is necessary to award a new agreement for AV services to avoid service interruption to Convention Center clients.

Following the use of a Request for Proposal (RFP) process, staff recommends awarding an agreement for preferred AV provider services at the Convention Center to Audio Visual Services Group, Inc., d.b.a. PSAV Presentation Services (hereinafter referred to as "PSAV").

**Policy Considerations:** The recommendations in this report are consistent with the provisions of Sacramento City Code Chapter 3.64.

**Economic Impacts:** None.

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

**Sustainability:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** On September 28, 2015, the City issued a RFP for preferred AV services for the Sacramento Convention Center. On October 13, 2015, the City received three proposals for AV services. The proposals were from PSAV, ShowGear Productions, and Sight & Sound Audio Visual Incorporated, d.b.a. Corporate Staging & Events. A panel of City staff first evaluated the proposals based on customer service, quality assurance, experience, and responsibility. If a proposal received a score of at least 80 percent from this initial evaluation, the proposer's financial worksheets were evaluated.

The proposal submitted by PSAV met and exceeded the requirements placed in the RFP. Not only does PSAV have a proven track record and experience working in similar size venues, but their commitment to customer service along with providing the best financial return to the City were key components in the recommendation.

**Financial Considerations:** Gross receipts from AV services are shared between PSAV and the Convention Center.

PSAV will provide a percentage of its total gross receipts to the Convention Center as a commission, based on the following structure:

If sale for services is executed by...	Commission Percentage for Equipment Charges	Commission Percentage for Labor and Service Charges
On-site personnel from PSAV	45%	20%
Travelling Division from PSAV	20%	20%

The annual commission revenue is estimated to be from \$200,000 to \$500,000 based on the services provided. For the initial three-year term of the agreement, PSAV will also pay \$50,000 to the Convention Center. The estimated amount and the additional pay were included in the Fiscal Year 2015/16 approved budget. An additional \$15,000 will be paid to the City for each year this agreement is extended.

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

PROJECT #: P16171131002  
PROJECT NAME: Preferred Audio-Visual Provider for Sacramento Convention Center  
DEPARTMENT: Convention and Cultural Services  
DIVISION: Convention Center

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT \*

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

Audio Visual Services Group, Inc.  
d.b.a. PSAV Presentation Services  
111 W. Ocean Blvd., #1110  
Long Beach, CA 90802

("CONTRACTOR"), who agree as follows:

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

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\* 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.

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

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

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

Print name: Jody Ulich

Title: CCS, Director

For: John F. Shirey, City Manager

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 E - Non-Discrimination in Employee Benefits

**CONTRACTOR:**

Audio Visual Services Group, Inc.  
NAME OF FIRM (dba PSAN)

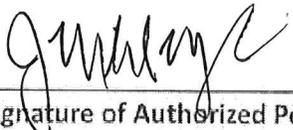
13-40256666  
Federal I.D. No.

30-699875  
State I.D. No.

125514  
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

**J. Michael McIlwain**  
President & CEO

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

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

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

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

**PSAV**

Name of Provider

5100 N. River Rd, Suite 300, Schiller Park IL 60176

Address

The above named Provider hereby declares and agrees as follows:

1. I have read and understand the Non-Discrimination In Employee Benefits By City Providers Ordinance ("Ordinance") provided to me by the City of Sacramento ("City") in connection with the City's request for proposals or other solicitations for the performance of services, or for the provision of commodities, under a City contract or Contract ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the requirements of the Ordinance, codified as Chapter 3.54 of the Sacramento City Code.
3. I understand, 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

I agree that should I offer any of the above listed employee benefits, that I 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. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. In the event that 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, I will not be required to provide the benefit, nor shall it be

- deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
  - c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with 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, in the infrastructure, 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 the Contract is executed with the City.

- g. Until the expiration of a current collective bargaining Contract(s) where, in fact, employee benefits are governed by a collective bargaining Contract(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the Contract(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining Agreement(s).
- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining Contract(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

5. I understand that failure to comply with the provisions of Section 5. (a) through 4. (i), above, will subject me 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; deemed ineligible for future contracts for up to two (2) years; 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. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.

7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one Provider is available to enter into a contract or Contract to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the EBO requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

8. In consideration of the foregoing, I shall 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 City's Equal Benefits Requirements or of the Ordinance by me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Provider to the provisions of this Declaration.

  
Signature of Authorized Representative

\_\_\_\_\_  
Date

J. Michael Mellwain  
Print Name President & CEO

\_\_\_\_\_  
Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:  
Dustin Hollingsworth, Operations Manager & Technical Director  
City of Sacramento Convention Center  
1030 - 15th Street, Suite 100, Sacramento, CA 95814  
Ph: 916-808-5538 / Fax: 916-808-7687 / E-mail: Djhollingsworth@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:  
Shannon Trujillo, Regional VP, Sales  
Audio Visual Services Group, Inc. d.b.a. PSAV Presentation Services  
5100 N. River Road, Suite 300, Schiller Park, IL 60176  
Ph: 702-281-2529 / E-mail: strujillo@psav.com

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

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

3. Conflict of Interest Requirements.

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

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

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

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

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

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

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

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

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

**4. Scope of Services.**

The services provided shall be as set forth in Attachments 1 and 2 to Exhibit A, attached hereto and incorporated herein.

**5. Time of Performance.**

*The services described herein shall be provided for an initial period from January 1, 2016 to December 31, 2018, with up to two additional one-year extension option(s) at the sole discretion of the CITY.*

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

A. Compensation to CITY.

1. **Commission Payments.** If the sale for services is executed by the on-site CONTRACTOR'S personnel, CONTRACTOR will pay to the CITY commissions based on revenues received by CONTRACTOR from Clients of the Sacramento Convention Center, in the amount of forty-five percent (45%) of all gross receipts for equipment rentals and twenty percent (20%) of all gross receipts for labor and service charges.

If the sale for services is executed by the CONTRACTOR'S traveling division, CONTRACTOR will pay to the CITY commissions based on revenues received by CONTRACTOR from Clients of the Sacramento Convention Center, in the amount of twenty percent (20%) of all gross receipts for equipment rentals, labor and service charges.

In the event that discounting is necessary to secure business when sale is executed by the on-site CONTRACTOR'S personnel, the CONTRACTOR may grant such discounts on the basis that neither the CITY nor the CONTRACTOR benefit from lost business. The amount of the discount, if any, shall only apply to equipment charges and shall be at the CONTRACTOR'S reasonable discretion but subject to the approval of the General Manager of the Sacramento Convention Center or his/her designee. The equipment commission will be subject to a shared discount schedule based as follows:

Discount Percentage on Equipment Charges	Commission
0.00 – 9.99%	45%
10.00 – 14.99%	43%
15.00 – 19.99%	42%
20.00 – 24.99%	40%
25.00 – 29.99%	38%
30.00 – 34.99%	36%
35.00 – 39.99%	33%
40.00 – 44.99%	30%
45.00% & up	27%

In addition to the commission payments, CONTRACTOR will provide to the CITY a \$50,000 signing bonus for the initial three-year term of the Agreement and an additional \$15,000 for each year this Agreement is extended. CONTRACTOR will pay the initial \$50,000 to the CITY by January 31, 2016, and will pay the additional \$15,000 to the CITY within thirty (30) days from the beginning of each extension period. Upon expiration of the initial three-year period, the CITY shall retain the full \$50,000, and the same shall apply after each extension period regarding the \$15,000 for each period. However, if the CITY terminates the Agreement during

the initial three-year term, the CITY shall reimburse a portion of the \$50,000 to the CONTRACTOR based on the amount of time that has elapsed. The amount to be reimbursed shall be reduced by \$1,388.88 per month. For example, if the CITY terminates the Agreement after one year of performance, the CITY shall reimburse CONTRACTOR \$33,333.44. Similarly, for the \$15,000 payments, if the CITY terminates the Agreement before the expiration of the extension term, the CITY shall reimburse an amount which is reduced by \$1,250 per month.

Additionally, CONTRACTOR will invest approximately \$275,000 towards new audio-visual equipment, as specified in Section D of the Scope of Services. This new equipment shall be on-site at the Sacramento Convention Center at the start of this Agreement.

2. **Outside Service Vendor (OSV) Fee.** CONTRACTOR shall collaborate with the CITY to determine the OSV fee to charge Clients who utilize or bring in an outside audio-visual vendor other than CONTRACTOR to provide audio-visual services for their event at the Sacramento Convention Center.
3. **Financial Reports.** CONTRACTOR will submit to the CITY, to the address mentioned below, a preliminary billing summary of sales activity for the previous month upon request of the CITY.

CONTRACTOR will submit to the CITY, to the address mentioned below, by the twentieth (20<sup>th</sup>) calendar day of each month, a final report of sales activity for the previous month, along with the Commission Payments. The report will provide a daily detail of gross receipts specified by type of service for each event at the Sacramento Convention Center, indicate total gross monthly sales and indicate commissions due to the City.

CONTRACTOR will submit to the CITY by the twentieth (20<sup>th</sup>) calendar day following each year of this Agreement, a report of sales activity for the previous year. The report will include gross receipts for each month, broken down by type of service and equipment rented, and the report must indicate the monthly commission due to the CITY.

Financial Reports and Commission Payments shall be sent to:

- City of Sacramento Convention Center  
1030 – 15<sup>th</sup> Street, Suite 100  
Sacramento, CA 95814  
Attn: Steven Sakakihara

Additionally, CONTRACTOR shall send electronic copies of these financial reports (based on the timelines as mentioned above) in Excel format to the following email address:

- Email: [shsakakihara@cityofsacramento.org](mailto:shsakakihara@cityofsacramento.org)

4. **Records, Accounting and Auditing.** During the term of this Agreement and for a period of three (3) years following the termination of this Agreement, CONTRACTOR will maintain in accordance with generally accepted accounting principles, the full and complete records regarding all services performed under this Agreement. The CITY will have the right to

prescribe the form of records to be kept by the CONTRACTOR in accordance with this provision.

CITY will have the right, after reasonable notice, and at reasonable times to free access to all books, correspondence, memoranda, or other records of the CONTRACTOR relating to this Agreement for the purpose of verification of gross receipts reported by the CONTRACTOR during the term of this Agreement.

In addition to the financial reports specified in Section A(3) above, CONTRACTOR will furnish to the CITY, at the CONTRACTOR'S expense, an annual financial statement for the previous twelve (12) months of service. This statement will include a schedule of gross receipts covering the previous twelve (12) months of service. The statement will be prepared by a Certified Public Accountant on their stationery for the CONTRACTOR and only include financial data for the operations that occur in the Sacramento Convention Center. This statement shall be provided to the CITY, at the address mentioned above, within ninety (90) days from December 31<sup>st</sup> for each year of this Agreement.

5. **Gross Receipts.** The term "Gross Receipts" as used in this Agreement is defined to be all money, cash, receipts, receivables, assets, property, or other things of value including, but not limited to, the entire price charged for all services provided under this Agreement whether or not payment is made at time of sale. Gross receipts will not include sales and excise taxes required to be collected by CONTRACTOR.
6. **Late Payments.** Late payments will be subject to additional charges of one and one-half percent (1.5%) per month on the unpaid balance due.
7. **Payment of Taxes.** CONTRACTOR acknowledges that certain taxes may be assessed for its use of the CITY'S real property (Possessory Interest Tax). CONTRACTOR will promptly pay any and all taxes, including real property, personal property and any other possessory interest or use tax, assessed or levied on CONTRACTOR'S interest in this Agreement, CONTRACTOR'S real or personal property, and/or improvements constructed by CONTRACTOR.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

Not furnish any facilities or equipment for this Agreement;

or

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

As specified in Attachment 1 to Exhibit A.

EXHIBIT D  
PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

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

sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

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

Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

**7. CONTRACTOR Information.**

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. **Term; Suspension; Termination.**

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

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing Indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

- (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 1 year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

B. Additional Insured Coverage

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

C. Other Insurance Provisions

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

- (1) Except for professional liability, CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to 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 Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
  - B. **Sellers Permit:** For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
  - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

## EXHIBIT E

### REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

#### INTRODUCTION

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

#### APPLICATION

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

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

#### DEFINITIONS

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

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

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting

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

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

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

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

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

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

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

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

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

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

You May . . .

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

City of Sacramento  
Procurement Services Division  
915 I Street, Second Floor  
Sacramento, CA 95814

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

Attachment B



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

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

The included employee benefits are:

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

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

**You May . . .**

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

City of Sacramento  
Procurement Services Division  
915 J Street, Second Floor  
Sacramento, CA 95814

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

**Discrimination and Retaliation Prohibited.**

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

**You May Also . . .**

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

ATTACHMENT 1 TO EXHIBIT A  
PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

**A. Scope of Work.**

1. CONTRACTOR will operate a full-service Audio-Visual (AV) Services Department in support of clientele who have a license agreement with the Sacramento Convention Center to participate in events at the Sacramento Convention Center (hereinafter "Clients"). The AV Services Department will include AV services, equipment, and personnel, hereinafter referred to as "Services". CONTRACTOR shall ensure that staffing and services provided are of the highest quality available. CONTRACTOR shall consistently endeavor to enhance the Sacramento Convention Center's operations through identification of viable additional services requested by the CONTRACTOR'S clientele over the term of the Agreement.

**B. Staffing**

1. CONTRACTOR will appoint a Director of AV Services or Director of Operations, acceptable to the General Manager of the Sacramento Convention Center (hereinafter referred to as "General Manager"), who will be assigned to the Sacramento Convention Center on a full-time basis and will manage CONTRACTOR'S efforts on behalf of the Sacramento Convention Center. The Director shall have a minimum of four (4) years' experience as an in-house Director of AV or Director of Operations at a comparable sized convention center or conference hotel. The Director shall be available to attend pre-convention and other meetings with the Sacramento Convention Center's staff and/or Clients. The Director will also oversee CONTRACTOR'S personnel in the set-up, tear down and operation of the equipment.
2. CONTRACTOR will also employ a Sales Manager of Services, acceptable to the General Manager, who shall be assigned to the Sacramento Convention Center on a full-time basis and will sell and market CONTRACTOR'S services on behalf of the Sacramento Convention Center. The Director of AV Services and the Sales Manager cannot be the same individual. A minimum three (3) years' experience working as an in house AV Sales Manager at a comparable sized convention center or conference hotel shall be required or as approved by the General Manager otherwise.
3. CONTRACTOR will maintain office hours five (5) days per week, or as required by the needs of Clients of the Sacramento Convention Center and/or the General Manager. CONTRACTOR will furnish compatible communication systems to assure availability of CONTRACTOR personnel, 24 hours per day, 365 days per year.
4. CONTRACTOR will provide adequate personnel, equipment and materials acceptable to the General Manager to permit the timely completion of all work as requested by Clients. All

personnel shall be trained and supervised in accordance with accepted industry practices and will conform to the reasonable rules and regulations of the Sacramento Convention Center established from time to time by the General Manager. All work shall be completed in a professional manner. At no point, will any of the CONTRACTOR'S personnel work for another vendor at the Sacramento Convention Center.

5. CONTRACTOR shall be capable of meeting last minute requests as specified by the Sacramento Convention Center's staff for providing all basic audio-visual equipment and service.
6. CONTRACTOR will provide uniforms to all personnel that are acceptable to the General Manager and/or enforce not less than business casual attire dress code. Picture identification must be provided by CONTRACTOR and worn by all personnel while on the Sacramento Convention Center premises.
7. When CONTRACTOR is responsible to provide AV services for an event at the Sacramento Convention Center, CONTRACTOR will ensure that all rigging is done by qualified riggers acceptable to the General Manager.
8. CONTRACTOR will provide efficient, prompt and professional service to Clients to the Sacramento Convention Center, and will correct any conduct that does not meet with approval of the General Manager immediately upon notice.

#### **C. Administration**

1. CONTRACTOR will maintain and operate Services in a first class manner, and will keep the Sacramento Convention Center premises in a safe, clean, orderly and inviting condition at all times satisfactory to the standards of the General Manager.
2. CONTRACTOR will cooperate with staff from the Sacramento Convention Center and the Convention and Visitors Bureau (CVB) to market the Sacramento Convention Center to potential Clients.
3. CONTRACTOR will provide at least one computer for their use in CONTRACTOR'S on-site office which meets the approval of the General Manager. This computer will be placed on the CITY'S network, and will be used for e-mail communication and the master event management system used to book events at the Sacramento Convention Center. In the event of service needs, CITY shall provide network line(s) and connection for this computer at no cost to the CONTRACTOR. CONTRACTOR will provide all computer equipment and will be responsible for required upgrades and licensing costs.
4. CONTRACTOR will provide a cell phone(s) compatible with that of the Sacramento Convention Center's management, which shall be worn at all times by CONTRACTOR'S Director of AV

Services, as well as the Operation Manager on duty during all events. CONTRACTOR shall also provide emergency numbers to the Sacramento Convention Center's personnel through which a representative of CONTRACTOR may be reached at all times.

5. CONTRACTOR, at its own expense, shall provide at least two radios for use by CONTRACTOR'S staff while on the Sacramento Convention Center property. The frequency must be compatible with that of radios operated by staff at the Sacramento Convention Center.
6. CONTRACTOR will implement a marketing and promotion plan for the sale of services, consistent with the plan submitted in their proposal and approved by the CITY, within ninety (90) days of the start of this Agreement.
7. CONTRACTOR will provide sufficient marketing literature, including price schedules for Equipment and Services, to inform prospective Clients of the services available at the Sacramento Convention Center. The literature should emphasize the quality and depth of services available. The staff at the Sacramento Convention Center shall distribute marketing material to all prospective and contracted Clients. All materials are subject to the approval of the General Manager prior to circulation.
8. CONTRACTOR shall provide service order forms specific to the Sacramento Convention Center and make forms available to general service providers at no cost for inclusion in exhibitor kits.
9. Under certain circumstances, CONTRACTOR shall provide the CITY with Equipment and Services without charge, based upon the following conditions being satisfied: (i) the CITY requires the use of Equipment or Services at the Sacramento Convention Center for a non-revenue generating event for its internal use, such as staff meetings, employment training and site inspections; (ii) the Equipment is readily available and not otherwise being used, serviced or rented; (iii) CONTRACTOR personnel required to provide Services in connection with the Equipment are available (not already committed) and regularly scheduled to be on-property at the Sacramento Convention Center during the particular event; and (iv) the Sacramento Convention Center provides CONTRACTOR with reasonable notice specifying the Equipment and Services required. CONTRACTOR shall provide sub-rentals, outside labor services and merchandise (i.e., flip chart paper and markers, tape, batteries and other items designed for one-time usage) in connection with such Services at CONTRACTOR'S direct cost of such item.

#### D. Equipment

1. Pricing schedules for Equipment and Services shall be competitive as compared to pricing schedules offered at comparable operations, and approved by General Manager at award of this Agreement. General Manager must approve all proposed pricing changes prior to change.

2. CONTRACTOR will invest approximately \$275,000 in new audio-visual equipment for the Sacramento Convention Center that will have the capability to accommodate daily, back-up and last-minute requirements. The equipment shall be the latest technology available and the equipment will be upgraded or replenished as necessary to take advantage of emerging technology and to maintain appearance standards acceptable to the General Manager. CONTRACTOR'S new inventory will consist of professional-grade, brand-recognized equipment that will enhance the Sacramento Convention Center's reputation as a technologically advanced meeting facility. CONTRACTOR shall have the new on-site inventory available and placed within the Sacramento Convention Center at the start of this Agreement. Upon termination or expiration of the Agreement, CONTRACTOR shall retain the new audio-visual equipment. Under no circumstances will CITY reimburse CONTRACTOR for this equipment.
3. Following execution of the Agreement, CONTRACTOR will provide an updated inventory list of equipment on-site at the Sacramento Convention Center acceptable to the General Manager, and additional inventory in the Sacramento area as identified by the General Manager to minimize the need to rent equipment. Any proposed changes, including upgrades, to this list shall be provided to the General Manager for approval.
4. Except as hereinafter provided, upon expiration or termination of this Agreement, all equipment installed in the Sacramento Convention Center shall become the property of the CITY without compensation to CONTRACTOR.
5. CONTRACTOR will maintain adequate inventories of equipment and supplies. The General Manger may request the repair, removal, or replacement of any on-site equipment by CONTRACTOR as needed. In addition to any requests from the General Manager, CONTRACTOR will, at its own cost, maintain and/or replace all equipment as necessary, to ensure that it is fully functional and ready for use at all times. CONTRACTOR shall be the sole contact point and the sole responsible party to be held accountable for the proper functioning of the Services required under this Agreement.
6. CONTRACTOR will set up, tear down and operate, where required, all equipment furnished by CONTRACTOR. CONTRACTOR shall provide general care and routinely inspect and monitor the permanently installed systems (including but not limited to sound and lighting systems). CONTRACTOR will provide all general cleaning and system support including replacement of broken jacks and blown fuses at no cost to the CITY.
7. CONTRACTOR will provide, in conjunction with an appointed Sacramento Convention Center representative, on an annual basis, an overall checkup of the Sacramento Convention Center's sound and lighting systems and make a full report of its findings and recommendations to the General Manager. In the event of a major failure of either system requiring replacement of components or the need for a capital outlay, CONTRACTOR shall inform the General Manager of the costs involved before the work is begun.

8. CONTRACTOR will not be permitted access to the CITY owned equipment unless approved by the General Manager. In the event that CONTRACTOR finds it necessary to work in the same secured area as the CITY owned equipment, at no time may the CONTRACTOR alter or interfere with the CITY owned computer/telephone network equipment. CONTRACTOR'S equipment shall be identified in a suitable manner to clearly distinguish it from equipment owned by the CITY.
9. At the request of CONTRACTOR, Sacramento Convention Center's staff shall install or have installed, at CONTRACTOR'S expense, a private open phone line in the CONTRACTOR'S on-site office with the monthly charges for services and calls billed to CONTRACTOR.
10. CITY shall exempt CONTRACTOR from those charges usually applicable for connection to or from the Sacramento Convention Center's sound and electrical systems.

**E. Rigging**

1. At the sole discretion and direction of the General Manager, the CITY, in conjunction with CONTRACTOR, shall develop a process or procedures regarding when CONTRACTOR is to provide rigging services of audio-visual equipment at the Sacramento Convention Center. If established, the process or procedures shall be added to this agreement through a supplemental agreement approved by both the CONTRACTOR and CITY prior to these services being provided by the CONTRACTOR.

**F. Facilities and Services Provided by CITY**

1. Sacramento Convention Center's staff shall recommend CONTRACTOR exclusively to any Sacramento Convention Center client who requests the type of services and equipment provided by CONTRACTOR and shall provide such potential Clients with information enabling them to contact CONTRACTOR.
2. Sacramento Convention Center's staff shall provide the CONTRACTOR with authority to operate the in-house audio visual systems. Without the express written consent of the General Manager, no party except the Sacramento Convention Center's staff or the CONTRACTOR may connect equipment of any kind to the house sound or video systems.
3. Without limiting the foregoing, the Parties of this Agreement have agreed that other outside audio-visual vendors besides CONTRACTOR may be permitted to provide audio-visual services and equipment at the Sacramento Convention Center if such vendor is approved by the General Manager. Under such circumstances, CONTRACTOR shall reasonably cooperate with the other audio-visual vendor.

CONTRACTOR shall collaborate with the CITY to determine the outside service vendor (OSV) fee

to charge to any Clients who utilize or bring in an outside audio-visual vendor other than CONTRACTOR to provide audio-visual services for their event at the Sacramento Convention Center.

If CONTRACTOR supplies Equipment or Services in combination with the services of another outside audio-visual vendor, the terms of this Agreement shall apply with respect to Equipment or Services supplied by CONTRACTOR, including, charging the outside audio-visual vendor or the Client the approved prices for the Equipment and/or Services. Similarly, the CITY will be entitled to receive commissions for CONTRACTOR-provided Equipment and Services, pursuant to terms of this Agreement.

4. Sacramento Convention Center's staff shall furnish suitable and adequate space within the Sacramento Convention Center, as determined by the General Manager, for the operation of the Services to be provided and full storage of CONTRACTOR'S equipment. Representatives authorized by CONTRACTOR and Sacramento Convention Center's staff shall maintain keys to the designated office and storage areas. Those representatives shall be responsible for the safekeeping of keys and preventing unauthorized access to secure areas.
5. Sacramento Convention Center's representatives shall not negotiate or discount CONTRACTOR'S prices. The General Manager shall notify CONTRACTOR when negotiation with client is necessary.

#### **G. Premises**

1. CONTRACTOR shall have the right to occupy and operate from the Sacramento Convention Center premises for the Services set forth herein, and for other business purposes necessary and incidental thereto, but not for any other purpose. CONTRACTOR accepts the Sacramento Convention Center premises in its present condition. Improvements made to the facility, including office space, must be approved by the CITY prior to installation.
2. CONTRACTOR will not erect, install or operate signage or improvements upon the Sacramento Convention Center premises or in or upon any other Sacramento Convention Center property, any signs or similar advertising devices for its own business without first having obtained the written consent of the from the General Manager. Such written consent may consider and provide conditions concerning factors such as existing signage, size, type, content and method of installation.
3. CONTRACTOR will, at its own expense, maintain all office and storage space in a clean and sanitary condition in accordance with, and consistent with all applicable rules of the CITY, and the demands and requirements of law, including health and safety codes.
4. CITY will have the right to enter the CONTRACTOR'S on-site office and storage area(s) at

reasonable times during operating hours, to determine if CONTRACTOR has complied and is complying with the terms and conditions of this Agreement. However, the CITY may enter the on-site office and storage area(s), at any time, in the case of an emergency affecting the public interest or property.

5. Upon termination or expiration of this Agreement, CONTRACTOR will quit and surrender Sacramento Convention Center premises in the same condition as existed upon move-in. Equipment, trade fixtures and personal property left by the CONTRACTOR in the Sacramento Convention Center beyond thirty (30) days of the termination date of this Agreement shall become the property of the CITY.

#### **H. Rights and Obligations of CONTRACTOR**

1. Subject to the rights reserved herein by the CITY, CONTRACTOR shall have the preferred right to operate at the Sacramento Convention Center.
2. CONTRACTOR will strictly comply with all state, federal and local laws, ordinances and regulations applicable to and governing the Services to be provided herein, and will, at its own expense, procure all necessary licenses and permits.
3. CONTRACTOR will not advertise or permit advertising in any manner, or directly or indirectly use the trademarks, symbols or trade name of the Sacramento Convention Center in connection with any production, promotion, service or publication, other than as approved by the General Manager in writing.

#### **I. Rights and Obligations of the CITY**

1. The CITY will, through its designated representative, be the final authority with regard to all aspects of the control, management and performance provided for herein and modifications to practices, policies or guidelines shall be approved by the CITY prior to implementation.
2. The CITY will not be held responsible for CONTRACTOR'S property, including equipment owned or leased by the CONTRACTOR and used, maintained or stored at the Sacramento Convention Center, nor shall it be responsible for damage resulting from a power failure, flood, fire, explosion, vandalism or other causes outside of the control of the CITY.
3. The CITY agrees it will receive the intellectual property rights under Section 7.A of the Professional Services Agreement where the intellectual property created is a work made for hire for CITY's own use.

**ATTACHMENT 2 TO EXHIBIT A**  
**PROFESSIONAL SERVICES AGREEMENT**  
**EQUIPMENT INVENTORY**

CONTRACTOR shall provide the following equipment for the Sacramento Convention Center at the start of this Agreement and until CONTRACTOR upgrades its equipment inventory in accordance with Section D of the Scope of Services:

Audio

- Soundcraft Expression 3 32 channel digital mixer
- JBL line array sound system
- Allen & Heath Zed10 10 channel mixer
- Shure SCM268 4 channel mixer
- Shure ULX-D Digital wireless microphone kits
- Shure wired microphones
- Shure/Tascam Digital audio recording package
- Ashly EQs

General Audio Visual

- DaLite 12'x21'4" fastfold screens (16:9 Widescreen Format)
- DaLite 9'x16' fastfold screens (16:9 Widescreen Format)
- DaLite 7'6"x13'4" fastfold screens (16:9 Widescreen Format)
- DaLite 12' cradle screens
- DaLite 10' cradle screens
- DaLite 8' tripod screens
- DaLite Designer flipchart easels
- DaLite black IFR velour drape panels (160' Running Feet)
- Presenter support, including laser pointers cue lights, speaker timers, etc.

Video

- Panasonic PT-DZ10K 10600 Lumen DLP projectors
- NEC NP-PX750U 7500 Lumen HD DLP projectors
- NEC PA-622U 6200 Lumen LCD projectors
- NEC NP-M352WS 3500 Lumen DLP projectors
- NEC NP-M323W 3200 Lumen DLP projectors
- NEC E805-AVT 80" LED monitors w/Premier stands
- NEC 19"-24" LCD monitors
- Digital Video Capture/Playback Pkg
- Analog Way video switcher

- Atlona HDMI/VGA over Cat-6 Distribution Pkg
- Lenovo laptop computers

#### Lighting

- ETC ellipsoidal lighting instruments
- Leprecon dimmer/controller
- AC Lighting LED instruments
- Jands Vista intelligent lighting controller
- 10' 12x12 Tomcat Truss