

Meeting Date: 12/15/2015

Report Type: Consent

Report ID: 2015-01062

Title: Agreement: Upgrade of the Department of Utilities Supervisory Control and Data Acquisition (SCADA) System, VTScada (VTS) [Two-Thirds Vote Required]

Location: Citywide

Recommendation: Pass a Resolution 1) suspending competitive bidding in the best interest of the City for the purchase of a VTScada (VTS) data point upgrade to 500,000 tags, additional software licenses, training, and support assistance for the City of Sacramento, Department of Utilities; and 2) authorizing the City Manager or the City Manager's designee to execute a Professional Services Agreement with Trihedral, Inc. to provide a VTScada (VTS) data point upgrade, additional software licenses, training, and support assistance in an amount not-to exceed \$277,167.

Contact: Dan Sherry, Engineering Manager, (916) 808-1419; Charley Cunningham, Utilities Operations and Maintenance Superintendent, (916) 808-5518, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Electrical & Instrumentation

Dept ID: 14001361

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Professional Services Agreement

City Attorney Review

Approved as to Form

Joe Robinson

12/7/2015 2:18:55 PM

Approvals/Acknowledgements

Department Director or Designee: Bill Busath - 11/30/2015 3:53:51 PM

Description/Analysis:

Issue Detail: The City of Sacramento, Department of Utilities (DOU), utilizes a Supervisory Control and Data Acquisition (SCADA) system which allows for local and remote monitoring, control, and alarming of its operational water, wastewater, and storm drainage facilities located throughout the City. The SCADA system that DOU uses, VTScada (VTS), is critical to the daily operations of these facilities and also retrieves and records operational data and alarms from each of the sites. Trihedral, Inc. is the author and sole supplier of VTS software, licenses, training, and support. To handle DOU's increased SCADA needs due to DOU facility expansion and other demands, DOU is recommending approval of a new agreement with Trihedral, Inc. to provide an upgrade to a 500,000 tag software license and the addition of 23 licenses: one VTS full configuration (development) license, two VTS runtime licenses, and 20 VTS thin client licenses, plus related training and support services.

Policy Considerations: Staff is recommending that the City contract with Trihedral, Inc. for software, licenses, training, and support on a sole source basis. To conduct a sole source procurement for supplies of \$100,000 or more, it is necessary to suspend competitive bidding. City Code Section 3.56.230 allows the City Council to suspend competitive bidding if the City Council determines, on a two-thirds vote, that it is in the City's best interests to do so. Staff believes that suspension of competitive bidding for these additional SCADA licenses, software, training, and support, is in the City's best interests, because DOU currently uses VTS, and Trihedral, Inc. is the author and sole supplier of VTS software, licenses, training, and support. VTS software is proprietary and no other vendor can supply this software, licenses, training, or support. The continued use of VTS software is required to ensure continuity with the DOU's existing SCADA System.

Economic Impacts: None.

Environmental Considerations: The Community Development Department, Environmental Planning Services Manager has reviewed the DOU request to purchase software updates, licenses, training, and support and determined the activity is not a project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(B)(2). The action consists of an administrative activity such as the purchasing of supplies.

Sustainability: The existence of a properly functioning SCADA System promotes sustainability by allowing the City to continue to monitor, control, and alarm the water treatment plants, combined wastewater treatment plants, drainage lift stations, combined sewer system and sewer lift stations, water reservoirs, wells, turnouts, and combined system level monitoring locations located throughout the City, both locally and remotely. By monitoring and controlling

the sites remotely, there is a reduced need to send vehicles and personnel to the site, providing a more efficient use of City resources.

Commission/Committee Action: Not applicable

Rational for Recommendation: DOU has been very pleased with the performance of the VTS system and Trihedral, Inc., and is requesting the purchase of VTS software upgrades, licenses, training, and support, in order to meet significantly increased need for controls and data acquisition from the SCADA system. The Water Treatment Plant (WTP) Rehabilitation project (Z14006000) has substantially increased the number of data points required for local and remote monitoring of the SCADA system and increased the number of licenses needed to allow Plant operators access to the SCADA system. The recent opening of the DOU's Department Operations Center (DOC), has also increased the need for VTScada software licensing and support. Additional licenses are needed at DOU facilities throughout the City for remote access to the SCADA system. Training and support assistance is needed to ensure that the software upgrade is successful.

Financial Considerations: The proposed agreement with Trihedral, Inc. has a not-to-exceed amount of \$277,167 for the purchase of software upgrades, licensing, training, and support assistance through June 30, 2016. Sufficient resources are available for the funding of the agreement as shown below:

Description	Funding Source	Fund Name	Amount (USD)
WTP Rehab Design	Z14006000	Water Fund (6005)	\$131,288
DOC Control Room Upgrade	Z14140100	Water Fund (6005)	\$3,767
SCADA Operations	Operating Budget (14001362)	Storm Drainage Fund (6011)	\$142,112
		Total	\$277,167

Local Business Enterprise (LBE): Trihedral, Inc. is not an LBE. The minimum LBE participation requirement is waived as the City Council is being asked to suspend competitive bidding to allow for this procurement on a sole source basis.

Background:

In 2009, the Department of Utilities (DOU) circulated a Request for Proposal (RFP) to replace the Intellution Fix32 (SCADA) software, previously used by the DOU, which was failing and no longer supported. A committee reviewed and ranked the bids, resulting in the selection of Trihedral, Inc.'s proposal. On November 10, 2009, the City Council approved the purchase of VTScada (VTS), from Trihedral, Inc. DOU purchased six VTS full configuration (development) licenses, 15 VTS runtime licenses, and 20 VTS internet client licenses. The existing software was purchased with the capability to monitor and control a maximum of 100,000 data points or tags.

The Water Treatment Plant Rehabilitation project, currently in process, has added new equipment and processes that have created an increased need for controls and data acquisition from the SCADA system. This increased demand for data acquisition and processing has increased the data points required beyond the existing 100,000 tag limit. The current software cannot support the additional tags and must be upgraded to a 500,000 tag software license. Addition of new buildings during the project also has increased the need for additional licenses to allow the Plant Operators to access the SCADA system throughout the Water Treatment Plants. The Water Plant Rehabilitation Project requires the addition of: one VTS full configuration (development) license to upgrade to 500,000 tags, two VTS runtime licenses, and nine VTS thin client licenses.

In addition, DOU recently opened its Department Operations Center (DOC). The DOC provides a centralized location for DOU staff security, communications, and facility operations monitoring during emergency events. As part of the DOC operations, DOU staff monitors the SCADA system during events using one VTS internet client license. To accommodate higher SCADA use during DOC events, DOU is requesting one additional VTS thin client license at this location.

10 additional thin client licenses will be installed at various DOU facilities throughout the City for remote access of the SCADA system. Twenty-one existing development and runtime licenses will be upgraded to accommodate the new 500,000 tag maximum.

In addition to the software and licensing, Trihedral, Inc. will be providing up to three weeks of training, and support assistance for the software upgrade and additional licenses through June 30, 2016, which coincides with the term of the City's agreement with Trihedral for support of the existing VTS software that the City currently uses. Prior to June 30, 2016, DOU plans to return to City Council to request approval of a new five-year agreement with Trihedral, Inc. for the entire VTS system, including software licensing, training, and support services.

DOU is requesting the total purchase of the following from Trihedral, Inc. in an amount not to exceed \$277,167:

- 21 upgrades to existing development and runtime licenses
- 1 new VTS full configuration (development) license 2 new VTS runtime licenses
- 20 new VTS thin client licenses
- Training and support assistance for City staff

RESOLUTION NO. 2015-

Adopted by the Sacramento City Council

SUSPENDING COMPETITIVE BIDDING FOR THE PURCHASE OF VTSCADA (VTS) SOFTWARE UPGRADES, ADDITIONAL LICENSES, TRAINING, AND SUPPORT ASSISTANCE FROM TRIHEDRAL, INC.

BACKGROUND

- A. The City of Sacramento, Department of Utilities (DOU), utilizes a Supervisory Control and Data Acquisition (SCADA) system which allows for local and remote monitoring, control, and alarming of its operational water, wastewater, and storm drainage facilities located throughout the City.
- B. The SCADA system that DOU uses, VTScada (VTS), is critical to the daily operations of these facilities and also retrieves and records operational data and alarms from each of the sites. Trihedral, Inc. is the author and sole supplier of VTS software, licenses, training, and support.
- C. To handle DOU's increased SCADA needs due to DOU facility expansion and other demands, DOU is recommending approval of a new agreement with Trihedral, Inc. to provide an upgrade to a 500,000 tag software license and the addition of 23 licenses: one VTS full configuration (development) license, two VTS runtime licenses, and 20 VTS thin client licenses, plus related support services. In addition to the software and licensing DOU will be receiving training and support assistance for the software upgrade and software system through June 30, 2016.
- D. Staff is recommending that the City contract with Trihedral, Inc. for software, licenses, training, and support on a sole source basis. To conduct a sole source procurement for supplies of \$100,000 or more, it is necessary to suspend competitive bidding. City Code Section 3.56.230 allows the City Council to suspend competitive bidding if the City Council determines, on a two-thirds vote, that it is in the City's best interests to do so.
- E. Suspension of competitive bidding for these additional SCADA licenses, software, training, and support, is in the City's best interests, because DOU uses the VTS system and Trihedral, Inc. is the author and sole supplier of VTS software, licenses, training, and support. VTS software is proprietary and no other vendor can supply this software, licenses, training, or support. To date, the performance of VTS software and Trihedral, Inc. has met the City's expectations as an effective and efficient monitoring and control system for the City's vital utility facilities. The continued use of VTS software is required to ensure continuity with the City's existing SCADA System.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL

RESOLVES AS FOLLOWS:

- Section 1. In the best interests of the City competitive bidding is suspended for the purchase of software, licenses, training, and support for the VTS SCADA system used by DOU facilities.

- Section 2. The City Manager or the City Manager's designee is authorized to sign an agreement with Trihedral, Inc. for the purchase of VTScada software upgrades, additional licenses, training, and support assistance, in an amount not to exceed \$277,167.

PROJECT #: 14001362

PROJECT NAME: Department of Utilities Upgrade to Supervisory Control and Data Acquisition (SCADA) System

DEPARTMENT: Utilities

DIVISION: Engineering

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTS, LANDSCAPE
ARCHITECTS, PROFESSIONAL ENGINEERS,
AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of 7 Dec 2015, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Trihedral, Inc.
7380 Sand Lake Road, Suite 160, Florida 32819
Phone: (407) 888-8203 Fax: (407) 888-8213

("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.

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: William O. Busath

Title: Department of Utilities, 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:

Trihedral, Inc.
NAME OF FIRM

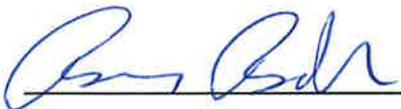
26-0449423
Federal I.D. No.

C3224377
State I.D. No.

1002129
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

Barry Baker, President
Print Name and Title

Additional Signature (if required)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Trihedral, Inc.

Address: 7380 Sand Lake Road, Suite 160, Florida, 32819

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

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

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

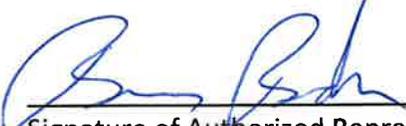
4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the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

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

authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

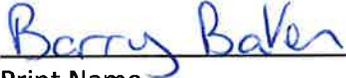
The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative



Date



Print Name



Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Tedd Vallance, Information Technology Supervisor
1395 35th Avenue, Sacramento, CA 95822*

Phone: (916) 808-5633 Fax: (916) 808-7955 E-mail: tvallance@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:

*Barry A. Baker, President
Trihedral, Inc.*

*7380 Sand Lake Road, Suite 160, Florida 32819
Phone: (407) 888-8203 Fax: (407) 888-8213*

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 during the period, or in accordance with the schedule, set forth in the scope of services.

ATTACHMENT 1 TO EXHIBIT A

1) One (1) 500K VTScada Full Development Runtime License version 11.1

Total cost: \$18,395.00

- o VTS Full Development is used for application configuration activities
- o Can be used as an operator interface.
- o Allows operational changes
- o Allows access to administration activities (i.e. security management)
- o Can be used simultaneously as a client and as a primary or backup server
- o Licensing is per seat
- o Ninety (90) days Free Support and Upgrades- Toll-free telephone support, remote access support (via internet) and software upgrades

2) One (1) SupportPlus for 500K VTScada Full Development Runtime License

Total cost \$1,149.70

- o Additional Five Months support to June 30, 2016 to match existing software expiration

3) Two (2) 500K VTScada Runtime Licenses version 11.1

Cost \$ 9,195.00 each – Total cost \$18,390.00

- o VTS Runtime does not allow application configuration activities
- o Can be used as an operator interface.
- o Allows operational changes
- o Allows access to administration activities (Le. security management)
- o Can be used simultaneously as a client and as a primary or backup server
- o Licensing is per seat
- o Ninety (90) days Free Support and Upgrades- Toll-free telephone support, remote access support (via internet) and software upgrades

4) Two (2) SupportPlus for 500K VTScada Runtime License

Cost: \$574.70 each – Total Cost: \$1,149.40

- o Additional Five Months support to June 30, 2016 to match existing software expiration

5) One (1) Twenty (20) Pack 500K VTScada Internet Client License version 11.1

Cost: \$70,895.00

- o VTS Internet Server (included with VTS Internet Client License)
- o Permits (thin) internet / intranet clients access to VTS applications
- o Does not require additional Internet server software
- o Includes one VTS internet Client
- o Form Approved by City Attorney (Design Professional) 12-24-14 Page 4
- o Displays sent to clients are automatically created and are identical to thick client displays.
- o Add-on to VTS Full Development or VTS Runtime license
- o Pages served through ActiveX component downloaded from, VTS Internet Server
- o Allows all operational monitoring and control activities and limited configuration activities
- o Allows IP connection over dialup or Ethernet
- o Licenses are concurrent
- o Ninety (90) days Free Support and Upgrades- Toll-free telephone support, remote access support (via internet) and software upgrades

6) One (1) SupportPlus for twenty (20) pack 500K VTScada Internet Client License

Cost: \$4,430.95

- o Additional Five Months support to June 30, 2016 to match existing software expiration

7) One (1) Upgrade from 100K VTScada version 11.1 to 500K VTScada version 11.1

Cost: \$126,936.25

- o Upgrade existing VTScada Licenses from 100,000 tag capability to 500,000 tag capability
- o Six (6) VTScada 100K Full Development Runtime License
- o Fifteen (15) VTScada 100K Runtime License
- o Twenty (20) VTScada 100K Internet Client License version
- o Add additional nine months 500K tag support to June 30, 2016 to match existing software expiration

Trihedral

VTScada

Software for Monitoring & Control

Trihedral Inc.
7380 Sand Lake Road, Suite 160
Orlando, Florida
32819

Phone: 407-888-8203
Fax: 407-888-8213
www.trihedral.com

City of Sacramento Department of Utilities

Support Assistance
Quote # Q8028-000-005

Date: Nov 23rd, 2015
Delivered to: Ted Vallance

Rev. #	Revision Details	Issue Date	Prepared By	Reviewed By
0	Original Issue – Upgrade and Training Assistance.	July 30 th , 2014	R. Davies	B. Baker
1	Rework for General Assistance	Dec 22 nd , 2014	R. Davies	L. MacNeil
2	Include estimated travel costs, 2015 Engineering rate.	Feb 18 th , 2015	R. Davies	L. MacNeil
3	Reverted to Trihedral's standard terms and conditions	Nov 20 th , 2015	R. Davies	B. Baker
4	Allow for 3 weeks of expenses	Nov 23 rd , 2015	R. Davies	B. Baker
5	Include engineering time on –site	Dec 07 th , 2015	R. Davies	B. Baker

ISO 9001:2008 Ref #
QMF 12B

Template Ref #
US.SEPT.22.2015

Internal Ref #
Q8028-001-005 Project Pricing.xlsx

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1 Overview

This document presents a budget estimate to provide on-going on-site support of the City of Sacramento Department of Utilities VTScada based system. The prices and time estimates provided are based a request from Charles Cunningham on Dec 16th, 2014.

2 Scope Definition

Provide on-site assistance to the City of Sacramento Department of Utilities personnel maintaining the VTScada based system.

2.1 Trihedral Responsibilities

When requested, Trihedral will provide a person knowledgeable with the Sacramento application and expertise in the area of concern (networking, application configuration, etc.).

2.2 City of Sacramento Department of Utilities Responsibilities

The City of Sacramento Department of Utilities will provide, when possible, a four week notice of request for on-site assistance.

3 Deliverables

Possible on-site support activities could include, but not limited to, the following:

1. Assistance with upgrades of VTScada software versions.
2. Application and tag structure layout review and recommendations.
3. Client/Server topology recommendations.
4. Monitoring device driver performance.
5. Training on VTScada diagnostic tools.
6. Analysis of VTScada Network based activity.
7. The setting of VTScada RPC link tolerances.
8. Analysis and recommendations of VTScada workstation resource loading.
9. Analysis and recommendations of Historical data configuration and utilization.
10. Advanced script coding options.

4 Schedule

This work has no currently scheduled activities. Trihedral will provide a knowledgeable person on-site at Sacramento, California within 4 weeks of a request for assistance once a formal purchase order for the work is in place.

5 Price

The provision of the services outlined in Section 3 *Deliverables* will be on a time and expense basis. All time will be billed at Trihedral's current hourly rate of **\$135.00 (USD)**. This will include all in house, travel, and on site time.

Trihedral's current standard hourly rate of **\$135.00 (USD)** is guaranteed for all work performed in the calendar year 2016.

The following is a cost estimate for three one week trips. Prices will vary depending on the amount of notice for a trip and the actual number of trips. All applicable travel and living expenses will be billed at Trihedral's cost.

Estimated Expense Description	Price	Quantity	Cost
Flights (2 week notice)	\$1,600.00	3	\$4,800
Airport Transportation or parking (Halifax)	\$100.00	3	\$300
Hotel (7 days)	\$840.00	3	\$2,520
Car Rental (7 days)	\$350.00	3	\$1,050
Meals (7 days)	\$350.00	3	\$1,050
Gas & Tolls	\$60.00	3	\$180
Engineering Time on Site (40 hours)	\$5400.00	3	\$16,200
Travel Time (24 hours)	\$3240.00	3	\$9720
Total			\$35,820

6 Terms

Placing a purchase order against this quotation will be deemed as having accepted the terms and conditions as detailed below.

6.1 Expiry

This quotation is valid for a period of 60 days from the issue date.

6.2 Billing Schedule

Trihedral will issue City of Sacramento Department of Utilities with monthly invoices for all time and charges to the project to date. Invoices will detail all time and expenses charged to the project on a per person basis.

Payment terms are net 30 days.

6.3 Engineering and Technical Services Terms and Conditions

Engineering and technical services which are enumerated in section 3 Deliverables, are provided by Trihedral subject to terms and conditions of the Professional Services Agreement between the City of Sacramento & Trihedral.

6.4 Acceptance by Customer

Quotation Accepted By:

Quote #: Q8028-000-005

Print Name: _____

Title: _____

Signature: _____

Date: _____

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

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 \$ 277,166.30.
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 2 to Exhibit A and Attachments 1 through 3 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described above.

D. Requests for payment shall be sent to:

Department of Utilities
1395 35th Avenue, Sacramento, CA 95822
Phone: (916) 808-1426 Fax: (916) 808-1497

Attn: Annette Atkins

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

Attachment 1 to Exhibit B

Trihedral, Inc. • 7380 Sand Lake Road • Suite 160 • Orlando, Florida 32819 • USA
 Phone: (407) 888-8203 • Fax: (407) 888-8213



Quotation

Quote Number: Q9185
 Terms: Net 30 Days
 Date: 06-15-2015
 Sales Person: Blair Sooley
 Valid Until: 11-19-2015
 Tax Info.: HST# 10538 9035
 VAT# 717 1513 55
 Tax ID# 26-0449423

Bill To	Ship To
Tedd Vallance City of Sacramento Department of Utilities 1395 35th Ave. Sacramento, CA 95822 USA	Tedd Vallance City of Sacramento Department of Utilities 1398 35th Ave. Sacramento, CA 95822 USA

S/N 22115

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	10	VTScada 500K - Thin Client - Single - Upgrade - Includes Three Months of SupportPlus	\$ 2,600.00	\$ 26,000.00
3	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 3,442.50	\$ 3,442.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$95,345.00

Group Totals	Subtotal:	\$ 34,042.50
	Total:	\$ 34,042.50

S/N 22116

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	10	VTScada 500K - Thin Client - Single - Upgrade - Includes Three Months of SupportPlus	\$ 2,600.00	\$ 26,000.00
3	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 3,442.50	\$ 3,442.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$95,345.00

Group Totals	Subtotal:	\$ 34,042.50
	Total:	\$ 34,042.50

S/N 22117

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 517.50	\$ 517.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$18,395.00

Group Totals Subtotal: \$ 5,117.50
 Total: \$ 5,117.50

S/N 22118

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 517.50	\$ 517.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$18,395.00

Group Totals Subtotal: \$ 5,117.50
 Total: \$ 5,117.50

S/N 22119

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 517.50	\$ 517.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$18,395.00

Group Totals Subtotal: \$ 5,117.50
 Total: \$ 5,117.50

S/N 22120

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 4,600.00	\$ 4,600.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 517.50	\$ 517.50

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$18,395.00

Group Totals Subtotal: \$ 5,117.50
 Total: \$ 5,117.50

S/N 22121

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals Subtotal: \$ 2,558.75
 Total: \$ 2,558.75

S/N 22122

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00

2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
Proposed Maintenance Expiry Date: June 30, 2016				
License Value for Renewals: \$9,195.00				

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22123

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
Proposed Maintenance Expiry Date: June 30, 2016				
License Value for Renewals: \$9,195.00				

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22124

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
Proposed Maintenance Expiry Date: June 30, 2016				
License Value for Renewals: \$9,195.00				

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22125

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
Proposed Maintenance Expiry Date: June 30, 2016				
License Value for Renewals: \$9,195.00				

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22126

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
Proposed Maintenance Expiry Date: June 30, 2016				
License Value for Renewals: \$9,195.00				

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22127

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00

2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75
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Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22128

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22129

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22130

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22131

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22132

#	Qty.	Product	Unit Price	Ext. Price
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1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22133

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22134

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

S/N 22135

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Runtime - Upgrade - Includes Three Months of SupportPlus	\$ 2,300.00	\$ 2,300.00
2	1	SupportPlus - 500K Upgrade - Additional Nine Months to Align	\$ 258.75	\$ 258.75

Proposed Maintenance Expiry Date: June 30, 2016
 License Value for Renewals: \$9,195.00

Group Totals	Subtotal:	\$ 2,558.75
	Total:	\$ 2,558.75

Quotation Totals

Currency: US Dollar	Subtotal:	\$ 126,936.25
	Total:	\$ 126,936.25

Notes

Please note that Full Developments are now designated as Development Runtimes and include 64-Bit, Application Version Control and the Connectivity Package (Web Services, ODBC Server and OPC Server).

This quote is for the expansion of licenses previously licensed under the Professional Services Agreement between the City of Sacramento and Trihedral, Inc., Prof Ser 2009 – Final.pdf, (PROJECT #: Z14000900 and X14000200). As such, the agreed terms between the parties shall apply to all licensing.

Quotation Accepted By

Quote Number Q9185

Print Name _____

Title _____

Signature _____

Date _____

Attachment 2 to Exhibit B

Trihedral, Inc. • 7380 Sand Lake Road • Suite 160 • Orlando, Florida 32819 • USA
 Phone: (407) 888-8203 • Fax: (407) 888-8213



Quotation

Quote Number: Q9693
 Terms: Net 30 Days
 Date: 10-19-2015
 Sales Person: Blair Sooley
 Valid Until: 11-19-2015
 Tax Info.: HST# 10538 9035
 VAT# 717 1513 55
 Tax ID# 26-0449423

Bill To	Ship To
Tedd Vallance City of Sacramento Department of Utilities 1395 35th Ave. Sacramento, CA 95822 USA	Tedd Vallance City of Sacramento Department of Utilities 1398 35th Ave. Sacramento, CA 95822 USA

New License

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Development Runtime - New - Includes Three Months of SupportPlus	\$ 18,395.00	\$ 18,395.00
2	1	SupportPlus - Additional Five Months to June 2016	\$ 1,149.70	\$ 1,149.70
Proposed Maintenance Expiry Date: June 30, 2016 License Value for Renewals: \$18,395.00				

Group Totals Subtotal: \$ 19,544.70
 Total: \$ 19,544.70

New License

#	Qty.	Product	Unit Price	Ext. Price
1	2	VTScada 500K - Runtime - New - Includes Three Months of SupportPlus	\$ 9,195.00	\$ 18,390.00
2	2	SupportPlus - Additional Five Months to June 2016	\$ 574.70	\$ 1,149.40
Proposed Maintenance Expiry Date: June 30, 2016 License Value for Renewals: \$9,195.00 Per License				

Group Totals Subtotal: \$ 19,539.40
 Total: \$ 19,539.40

Quotation Totals

Currency: US Dollar Subtotal: \$ 39,084.10
 Total: \$ 39,084.10

Notes

Please note that Full Developments are now designated as Development Runtimes and include 64-Bit, Application Version Control and the Connectivity Package (Web Services, ODBC Server and OPC Server).

This quote is for the expansion of licenses previously licensed under the Professional Services Agreement between the City of Sacramento and Trihedral, Inc., Prof Ser 2009 – Final.pdf, (PROJECT #: Z14000900 and X14000200). As such, the agreed terms between the parties shall apply to all licensing.

Quotation Accepted By

Quote Number Q9693

Print Name _____

Title _____

Signature _____

Date _____

Attachment 3 to Exhibit B

Trihedral, Inc. • 7380 Sand Lake Road • Suite 160 • Orlando, Florida 32819 • USA
 Phone: (407) 888-8203 • Fax: (407) 888-8213



Quotation

Quote Number Q9768
 Terms Net 30 Days
 Date 11-06-2015
 Sales Person Blair Sooley
 Valid Until 12-06-2015
 Tax Info. HST# 10538 9035
 VAT# 717 1513 55
 Tax ID# 26-0449423

Bill To

Tedd Vallance
 City of Sacramento
 Department of Utilities
 1395 35th Ave.
 Sacramento, CA 95822
 USA
 916-808-5633
 tvallance@cityofsacramento.org

Ship To

Tedd Vallance
 City of Sacramento
 Department of Utilities
 1398 35th Ave.
 Sacramento, CA 95822
 USA
 916-808-5633
 tvallance@cityofsacramento.org

#	Qty.	Product	Unit Price	Ext. Price
1	1	VTScada 500K - Thin Client - 20 Pack - New - Includes Three Months of SupportPlus	\$ 70,895.00	\$ 70,895.00
2	1	SupportPlus - Additional Five Months to June 2016	\$ 4,430.95	\$ 4,430.95

Quotation Totals

Currency: US Dollar
 Subtotal: \$ 75,325.95
 Total: \$ 75,325.95

Notes

Please note that Full Developments are now designated as Development Runtimes and include 64-Bit, Application Version Control and the Connectivity Package (Web Services, ODBC Server and OPC Server).

This quote is for the expansion of licenses previously licensed under the Professional Services Agreement between the City of Sacramento and Trihedral, Inc., Prof Ser 2009 – Final.pdf, (PROJECT #: Z14000900 and X14000200). As such, the agreed terms between the parties shall apply to all licensing.

Quotation Accepted By

Quote Number Q9768

Print Name _____

Title _____

Signature _____

Date _____

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] _____ Not furnish any facilities or equipment for this Agreement;

or

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

Access to various Department of Utilities facilities for software upgrades and installation including but not limited to:

- Sacramento River Water Treatment Plant
- E.A. Fairbairn Water Treatment Plant
- South Area Corporation Yard, Building 22, Department Operations Center

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

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 Warranties, Information, and Indemnity.

- A. CITY shall have a license for all software provided pursuant to this Agreement as specified by the VTScada Software License Agreement (Standard Conditions), attached as a schedule to this Exhibit. During the warranty period provided under this Agreement, CONTRACTOR shall provide toll-free telephone, email, and remote access support for all licensed software. The CONTRACTOR shall provide to CITY all version updates of the licensed software released during the warranty period. After expiration of the warranty period, the CITY may acquire version updates of the licensed software that were released prior to expiration of the warranty period without charge. Software updates released after expiration of the warranty period may be purchased by CITY at a rate equal to 15% of the current list price of the update multiplied by the number of years since warranty expiration, capped at a maximum price of 45% of the current list price of the update. The CITY's purchase of any software update also shall reinstate the Agreement's warranty period and warranty support provisions for that update for a period of one year after purchase. The licensed software is provided to CITY expressly without warranty or condition as to any standard of performance, or fitness for a particular purpose, including any warranty that the software will operate without interruption. In no event shall CONTRACTOR have any liability to CITY or any third party arising from the failure of the software to meet any standard of performance or the requirements of the CITY or its customers or to be fit for any particular purpose, provided that this sentence does not apply to claims, actions, lawsuits, or other proceedings referred to in subsection 7.B below.
- 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 software or any related 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. CONTRACTOR shall have full authority to conduct the defense of any such claim, action, lawsuit, or other proceeding to judgment or settlement, including sole authority to instruct defense counsel. CITY shall cooperate in such defense and investigation, at City's own cost with no reimbursement from CONTRACTOR, as may reasonably be requested by CONTRACTOR. The CITY shall promptly give notice in writing to CONTRACTOR if CITY is served with any such claim, action, lawsuit or other proceeding. In no event shall the liability of Trihedral to the CITY under this Section 7.B extend to consequential damages. CONTRACTOR's obligations hereunder shall survive any termination of this Agreement.
- C. If all or any part of the software or any related information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement are, or in the opinion of CONTRACTOR are likely to become, subject to a claim, action, lawsuit, or other proceeding referred to in subsection 7.B above, CONTRACTOR may, at its option and at CONTRACTOR's sole expense:

- (1) timely procure all rights needed for CITY to continue to use the software and related information without infringement; or
 - (2) timely replace or modify the software and related information so that its use by the CITY in accordance with this Agreement will be non-infringing, provided that any such replacement or modification shall not in any way reduce the functionality or usefulness of the software and related information to the CITY.
 - D. CITY acknowledges that CITY has the sole discretion in the selection, operation and maintenance of all elements of the CITY's systems that will use the licensed software, including without limitation personal computers, the operating system running the software, the communications and controls interfacing to the software, and the selection and suitability of the design of the monitoring and control application created by the software. The CITY agrees, and shall require any other party using the licensed software, to perform such checks and verifications of the operation of the licensed software as may be reasonably necessary to ensure its proper functioning and to review the results of using the software to avoid loss, injury, or damage.
 - E. 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.
 - F. 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 E, 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 claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal or real property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants,

subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY; and provided, further, that in no event shall CONTRACTOR be liable for any consequential damages.

- B. Insurance Policies; Intellectual Property Claims: CONTRACTOR'S maximum monetary liability under this Section 10 is limited to the insurance coverages required to be carried by CONTRACTOR under this Agreement. 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 X 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.** Any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above, shall be governed, construed, and enforced in accordance with the laws of the Province of Nova Scotia and Canada, and the parties agree that the Supreme Court of Nova Scotia shall have exclusive jurisdiction over the adjudication of all such claims, actions, lawsuits, or other proceedings.

Except as specified in the preceding paragraph, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of California, and the venue of any litigation arising out of or connected with this Agreement, except as specified in the preceding paragraph, 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, 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 directly 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 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 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.