

**Meeting Date:** 3/8/2016

**Report Type:** Consent

**Report ID:** 2016-00200

**Title: Contract: Citywide Pool Assessment and Repair (L19706500)**

**Location:** Citywide

**Recommendation:** Pass a Motion authorizing the City Manager or the City Manager's designee to execute a professional services agreement with Jeff Katz Architecture, Inc. for the architectural and design services for the citywide pool assessment in an amount not to exceed \$185,000.

**Contact:** Jill Nunes, Recreation Manager (916) 808-6095, Department of Parks and Recreation

**Presenter:** None

**Department:** Parks & Recreation Department

**Division:** Aquatics

**Dept ID:** 19001521

**Attachments:**

1-Description/Analysis

2-Background

3-Pool Assessment RFP

4-Contract

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### **City Attorney Review**

Approved as to Form  
Sheryl Patterson  
2/29/2016 11:18:28 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Shannon Brown - 2/19/2016 8:38:24 AM

## Description/Analysis

**Issue Detail:** The Department of Parks and Recreation is seeking approval to enter into an agreement with Jeff Katz Architecture (JKA) for facility condition assessment and evaluation of 17 City swimming and wading pools. The assessment will provide a plan to prioritize repairs and estimate costs so that the Department can strategically and efficiently reduce the current backlog of deferred maintenance for aquatic facilities. The contract amount is not-to-exceed \$185,000.

**Policy Considerations:** Providing parks and recreation facilities is consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods by expanding park, recreation, and trail facilities throughout the City. This is also part of the Park Development Process for park planning as stated in the 2005-2010 *Parks and Recreation Master Plan*

Sacramento City Code Chapter 3.64 sets forth the requirement for City Council approval of professional service contracts over \$100,000.

**Economic Impacts:** Not Applicable

**Environmental Considerations:** Planning and feasibility studies are exempt from environmental review under Section 15262 of the CEQA Guidelines. The future pool repair projects will also be exempt under Section 15301 of the CEQA Guidelines, Existing Facilities.

**Sustainability:** Not applicable

**Commission/Committee Action:** Not applicable

**Rationale for Recommendation:** The formal solicitation process for the Citywide Pool Assessment project was posted in accordance with Administrative Policy AP-4002. The proposals were received on October 23, 2015.

The Request For Proposals process resulted in six submittals and the ranking results are listed below. The submittals were evaluated using specific criteria including project team, availability, work plan and overall presentation in submittal of the proposal. The selection committee, through the evaluation process, chose two firms for an interview. After the interview process, JKA was chosen as the most qualified firm.

Contractor	Ranking
Alberti & Alberti	5
Arch Pak Aquatics	4
Jeff Katz Architecture	1
Terracon	2
Williams & Paddon	Disqualified
Two Rivers Architecture	3

**Financial Considerations:** There are sufficient Measure U funds in the Citywide Pool Assessment and Repair project (L19706500) to award the contract.

**Local Business Enterprise (LBE):** Jeff Katz Architecture is not an LBE however their subcontractor, BKF Engineers is an LBE and will perform more than 5% of the work, which satisfies the City's LBE requirements.

## Background

The Parks and Recreation Department is responsible for the safe operation of twelve public swimming pools and five wading pools located throughout the City of Sacramento. As most of these pools are over 25 years old, staff recommended that a comprehensive assessment of all aquatic facilities be undertaken to ensure that County health and safety regulations are being met and that a list of improvements be identified for future projects. On June 9<sup>th</sup>, City Council approved \$100,000 towards this assessment under Capital Improvement Project L19706500. On February 16<sup>th</sup>, City Council approved an additional \$125,000 towards this project budget to cover any additional staff and contractor costs.

With the assistance of Public Works staff, the Department of Parks and Recreation issued a Request for Proposal on September 14, 2015 for an Aquatics Assessment to include an evaluation of the following areas:

- 1) Overall condition of swimming pools
- 2) Swimming pool equipment and decks
- 3) Recommend corrective measures, including short and long term corrections, replacement needs with estimated costs and an estimated budget planned life cycle costs and obsolescence information
- 4) Determine compliance with current codes
- 5) Approximate structural life expectancy
- 6) Financial efficacy of renovation versus replacement, cost of renovation and/or repair
- 7) Adequacy of existing systems
- 8) Costs to upgrade to include enhancements such as slides or play features
- 9) Costs of Architectural/Engineering services to proceed with chosen alternatives
- 10) Evaluate structural systems (if as built) drawings exist

City staff committee reviewed all six submittals. Williams + Paddon were disqualified for failure to submit the mandatory addenda acknowledgement. From the five remaining proposals, two firms were selected to interview. The interview panel unanimously agreed that Jeff Katz Architecture (JKA) was the most qualified firm. JKA submitted a fixed fee price of \$185,000. JKA estimates that the assessment will take four months to complete. Staff will be returning to Council in the fall, after the 2016 swim season, to share the results of the assessment along with any requests for recommended immediate repairs.

**REQUEST FOR PROPOSALS**  
**FOR**  
**CITYWIDE POOL ASSESSMENT**



Bid Transaction # P16191521001

**Issue Date: September 14, 2015**

**City of Sacramento**  
**Department of Parks & Recreation - Aquatics**  
**4623 T Street, Sacramento, CA 95819**  
**Attn: Jill Nunes**

**PROPOSALS DUE BY 2:00PM**

**October 23, 2015**

**PROPOSALS TO:**

**Tim Hopper, Contract Services**  
**City of Sacramento**  
**Department of Public Works**  
**5730 24<sup>th</sup> Street, Building #4**  
**Sacramento, California 95822-3604**

**A Pre-Proposal Meeting (not mandatory) will be held at 9:00AM on**  
**October 7, 2015**

**At: Department of Public Works**  
**5730 24<sup>th</sup> Street, Building 3 Training Center**  
**Sacramento, CA 95822**

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# REQUEST FOR PROPOSALS FOR CITYWIDE POOL ASSESSMENT

## I. INTRODUCTION

This Request for Proposal (RFP) solicits a proposal for consultant services to provide a detailed report regarding the condition of various City of Sacramento aquatic facilities.

The objectives of the project are the following:

- To provide a plan to help the City of Sacramento strategically and efficiently reduce the current backlog of deferred maintenance for aquatic facilities.
- To enhance aquatic facility planning capabilities by addressing the highest priority needs and future needs, and
- To develop present and future budgets regarding the City's Aquatics Facilities.

Historically, there has been limited investment for on-going maintenance of these facilities, beyond the minimum to keep them functionally operational. As a result, there are significant unknowns about the current condition of underground infrastructure and the present condition of these facilities. Significant investment may be needed in the immediate future in order to maintain health and safety. The City of Sacramento is working to develop a master plan to determine the lifecycle and the condition of existing facilities with costs for renovation and/or replacement. This will be used for long term planning, prioritization of maintenance needs, funding and budgeting for the future.

The City of Sacramento (The City) requires aquatic facilities that function and are in good condition to provide quality services to its customers. These facilities represent a considerable public investment. To maintain its aquatic facility assets, the City desires to retain one firm that can conduct an assessment of existing City aquatic facilities. This Request for Proposals ("RFP") defines the criteria for the selection of the most responsive Consulting Teams to provide assessment services to the City. If selected, the consultant will provide a report to the City based on a three tiered evaluation approach of identified aquatics facilities including:

**Full Facility Assessment:** Including all site utilities, paved areas, pedestrian walkways, fencing and gates, exterior lighting and landscaping, plumbing, electrical, ADA compliance, hazardous materials, foundations and substructures, structural systems, exterior wall systems and roofing membrane systems, and a detailed lifecycle analysis indicating remaining useful life of existing infrastructure, buildings and systems for the following aquatic sites:

- Cabrillo Pool & Wading Pool
- Clunie Pool & Wading Pool
- Doyle Pool & Wading Pool
- George Sim Pool & Wading Pool
- Glen Hall Pool
- Johnston Pool & Wading Pool
- Mangan Pool
- McClatchy Pool & Wading Pool
- Oki Pool & Wading Pool

- Pannell Meadowview Pool & Wading Pool
- Southside Pool & Wading Pool
- Tahoe Pool & Wading Pool
- Bertha Henschel Play Pool
- Colonial Play Pool
- Mama Marks Play Pool
- Robertson Play Pool
- William Land Play Pool

## A. PROPOSAL

Qualified consulting firms are invited to submit proposals to provide Aquatic Facility Condition Assessment Services. Firms responding to this RFP shall submit:

- One (1) CD or flash Drive, five (5) bound copies of the technical proposal and one (1) unbound, reproducible copy.
- The proposal shall attempt to contain no more than 25 double-sided 8½” x 11” pages (not counting dividers).
- All pages shall be numbered.
- A table of contents and index dividers shall be included for ease of review by the selection committee.
- Included within the proposal should be a copy of the work plan with proposed hours and a proposed cost estimate in a section titled “Price/Fee Schedule”.

Proposals must be submitted by no later than:

**2:00PM, October 23, 2015** to:

**Tim Hopper, Contract Services  
City of Sacramento  
Department of Public Works  
5730 24<sup>th</sup> Street, Building #4  
Sacramento, California 95822-3604**

Please refer to Appendix A, “Proposal Submittal Requirements” for additional information regarding proposal requirements and Appendix B, “General Information” for specific detail about the consultant selection process and other City submission process requirements. Appendix C, “Evaluation Criteria Worksheet” shall be used by the selection committee to evaluate each proposal.

## B. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held **October 7, 2015** at 9:00am, Department of Public Works  
5730 24<sup>th</sup> Street, Building 3 Training Center  
Sacramento, CA 95822

- **Attendance at this meeting is not mandatory but highly recommended.**

## C. TENTATIVE CONSULTANT SELECTION SCHEDULE

Release Request for Proposals	09/14/2015
Pre-proposal Meeting	10/07/2015
Deadline for Questions	10/14/2015
Proposal Due Date	10/23/2015
Short List Interviews (if necessary)	Week of 11/09/2015
Negotiations with Top Selected Firm	December 2015

## II. **BACKGROUND**

The City of Sacramento requires aquatic facilities that function and are in good condition to provide quality services to its customers. These facilities also represent a considerable public investment. To maintain its facility assets, the City desires to retain a firm that can perform an assessment of City aquatic facilities on to enable systematic planning for current and future maintenance needs and/or replacement of facilities based on a lifecycle and condition analysis.

As a part of the City of Sacramento's effort to develop and implement a long range aquatic facilities plan the Department of Parks and Recreation has a need for an aquatic facilities condition assessment. Therefore, The City is seeking professional specialists ("Consultant" or "Consulting Team") to provide the required services for these endeavors. This Request for Proposals ("RFP") defines the criteria for the selection of the most responsive Consulting Teams to provide the services to the City.

## III. **SCOPE OF SERVICES**

The City is requesting proposals from professional aquatic facility assessment firms to provide facility condition assessment and evaluation services. In general, the Consultant shall:

- Determine existing conditions of City facilities by conducting on-site inspections and audits, examining records, consulting with City staff, and other tasks as required.
- Recommend corrective measures, estimating the costs of the corrections, and providing comparisons and evaluations among a range of possible corrective actions.

**If selected, the consultant shall prepare a report based on the needs identified at each aquatic facility. The selected consultant shall have the ability to assess the following systems:**

- 1) Overall condition of swimming pools
- 2) Swimming pool equipment and decks
- 3) Filtration systems, including adequacy of existing filtration, recirculation and sanitation systems – hydro calculations
- 4) Chemical feed systems

- 5) Underground plumbing
- 6) Swimming pool vessels and the associated structural systems
- 7) Determine existing conditions
- 8) Recommend corrective measures, including short and long term corrections, replacement needs with estimated costs and an estimated budget planned life cycle costs and obsolescence information
- 9) Compare existing pool vessels and their gutter, filtration, and recirculation systems, especially underground plumbing and overall enclosure with the 2007 CBC, NEC, MEC, T-24 and ADA
- 10) Determine compliance with current codes
- 11) Prepare volume and hydraulic calculations, including destructive testing when necessary
- 12) Approximate structural life expectancy
- 13) Financial efficacy of renovation versus replacement, cost of renovation and/or repair
- 14) Adequacy of existing systems
- 15) Costs to upgrade to include enhancements such as slides or play features
- 16) Costs of Architectural/Engineering services to proceed with chosen alternatives
- 17) Evaluate structural systems (if as built) drawings exist
- 18) Analyze hazardous material storage and potential for mold or algae, source water conditions.
- 19) Soils testing and engineering, including preparation of a geotechnical investigation report.
- 20) Adequacy of existing public utilities such as sanitary sewer, storm drainage/site drainage, domestic water, natural gas, and electrical distribution.

**The final reports shall include detailed evaluations of the following:**

All Site Utilities / Paved Areas / Pedestrian Pathways / Fencing and Gates / Exterior Lighting and Landscaping at the aquatic sites listed

Review of the infrastructure related to each building will include site utilities, paved areas, pedestrian pathways, fencing, gate, exterior lighting and landscaping. Area parking lots and roadway surfaces leading into or out of the properties will be inspected for general condition of the asphalt-paved areas.

The inspections will address the adequacy of storm/water drainage provisions, and identify and comment on the remaining useful life span of the paved areas. Typical items will include cracking, stripping sub-grade failure, alligator cracking, rutting and re-striping requirements. Fencing and gates associated with the property will be specifically reviewed for egress, functionality of the gates and general condition of the fencing and gates.

All exterior lighting will be reviewed for adequacy of area lighting both in the surrounding hard scape and parking facilities. Non-functional, deteriorated or broken lighting fixtures will be identified. Landscaping will be reviewed for general condition and operational function and maintenance of the sprinkler system.

Plumbing

The intent of the plumbing inspection is to review the operational function and condition of the existing plumbing systems. Inspection will include review of the water system, sanitary and storm system, drinking fountains and plumbing fixtures. Inspection will include estimation of remaining usefulness and service life of fixtures and equipment.

Electrical / Lighting

The intent of this area of inspection is to address, in general, the electrical serviceability and usability of the electrical systems and equipment. This inspection will include a review of applicable raceway, bus ways, under floor raceways, conductors, cable systems, outlets, switchboards/panel boards, grounding,

main panel and sub-panel and general wiring conditions. Review of lighting will include general conditions of light fixtures and associated equipment, as well as general layout and illumination output.

#### ADA Compliance

Any requested ADA reviews may address the presence of general access and egress provisions for staff as well as the general public. From the entry to the aquatic facilities assessment will include door pressure testing, door width and setback provisions, and proper clearance for wheelchair access to toilets and other public access areas. Lighting and signage will also be reviewed for compliance to current ADA requirements.

#### Hazardous Materials

The consultant may be asked to perform a visual hazardous materials survey (asbestos building materials, lead-based paint, potential PCB-containing electrical equipment, mercury, vapor-containing equipment, mold inspection, and underground storage tank). The visual asbestos building materials survey will be performed by an asbestos consultant under the Asbestos Hazards Emergency Response Act and certified by Cal-OSHA. A Department of Health Services certified Inspector will perform the visual lead based paint survey.

A Registered Environmental Assessor accredited by the California Environmental Protection Agency (EPA) may be requested to conduct a survey of PCB-containing electrical equipment, mercury vapor-containing equipment, potential mold and underground storage tank (UST's). In the past, oil containing PCB's has been used in electrical equipment, such as transformers and fluorescent light ballasts, as a dielectric insulating fluid for heat dissipation. Manufacturing of PCB's was banned in 1976; however, distribution of electrical equipment with PCB's was still allowed after that time. The presence, locations, and condition of suspected mercury vapor-containing equipment will be evaluated visually.

#### Foundations / Substructures / Structural Systems

All accessible foundation walls, slab floors, concrete and masonry components will be inspected for structural cracks heaving or subsidence or other signs of significant deterioration or distress, including observation specific to adequacy of drainage provisions.

#### Exterior Wall System

All exterior building finishes will be inspected for damage or deterioration to stucco, wood siding, concrete, masonry block or brick lay-up and paint protected coated surfaces. Assessment of damage or deterioration to exterior exposed wood framed or timber supported structures such as awnings or other components will also be performed. Inspections will also include review of window and door systems.

#### Roofing Membrane System

The roofing membrane system will be visually inspected for damage or otherwise deteriorated roofing systems to include review for adequacy of drainage and flashing as well as evidence of water infiltration into the building envelope. Specific materials and components that exhibit evidence of deferred maintenance and may require replacement before what would be considered standard life expectancy will be identified.

#### Ceiling Systems / Floor Coverings / Interior Wall and partition Systems

All inspections of the building interior will include a review of the ceiling systems, flooring systems and floor coverings and interior walls and partition systems. Ceilings and surfaces around doors, windows and roof penetrations will be inspected for evidence or signs of leakage. Ceiling lines will be inspected for structural evidence of irregular sloping or sagging associated with the structural roof support system. Floor surfaces will be reviewed for damage or above normal wear and tear.

### Fire Protection and Life Safety Systems

The purpose of this area of inspection is to identify the existence of and operational function of a fire protection system or devices for all occupied spaces. The system and associated equipment, such as fire extinguishers, will also be reviewed for compliance to current code.

It is anticipated that final work products produced shall include:

- A comprehensive, justifiable list of deficiencies and scheduled maintenance needs of each requested site.
- A list of immediate, short-term and long-term corrections and replacement needs with estimated costs for each requested site.
- Development of replacement values for requested City aquatic facilities.

**APPENDIX A**  
**PROPOSAL SUBMITTAL REQUIREMENTS**

**INTRODUCTION**

These guidelines were developed to standardize the preparation of proposals by consultants for professional services. The purpose of these guidelines is to help assure consistency in format and content of proposals that are prepared by consultants and submitted to the City. This process will reduce the time required for the consultant to prepare a proposal and will simplify the review process by City staff.

The proposal should include the following components in the order listed:

1. Introductory Letter Containing Required Components
2. Office Location at which Work will be Performed
3. Proposals and Experience of Project Manager and Team
4. Work Plan
5. Supportive Information
6. References as Outlined
7. A Cost Proposal containing Estimated Work Hours, Billable Hourly Rates, and Cost Estimate for the Project (it must tie to the Work Plan).
8. Conflict of Interest Statement & Requirements
9. Insurance Coverage
10. Local Business Enterprise (LBE) Forms
11. Sample Consultant Services Agreement
12. Addenda and Additional Information

**REQUIRED DETAIL**

**Firms are required to address the following questions by the deadline set forth on the cover sheet of this RFP in order to be considered responsive.**

The submittal shall include the following components in the order listed:

1. **Introductory Letter.** This letter should be addressed to:

**Jill Nunes, Recreation Superintendent**  
**City of Sacramento**  
**Department of Parks & Recreation - Aquatics**  
**4623 T Street**  
**Sacramento, CA 95819**

The Introductory Letter shall Contain the Following Required Components:

- Indicate the name of the firm submitting the proposal, the mailing address, telephone number, and the name of an individual to contact if further information is desired.

- This letter should reflect the consultant's project understanding and summarize critical issues, recognition of the requirement to meet critical project deadlines, challenges, milestone tasks, appropriate use of resources, and any summary information that may be useful or informative to the City.
- This submittal shall be based on existing information available in the Request for Proposal and from applicable regulations or requirements.
- This letter should also contain an expression of the consultant's interest in the work, a brief summary statement regarding the Proposals of the consultant to do the work, and a brief summary of any information about the project team.
- The consultant shall also state if the firm is available to participate in the interview process during the week of 11/09/2015 if needed.

2. **Office Location at Which Work will be Performed**

List the office location at which any portion of the work will be performed.

3. **Proposals and Experience of Firm and Key Team Members:**

List any aquatic facility condition assessment experience that qualifies the proposed team as uniquely qualified to complete this project.

4. **Work Plan**

Provide a brief description explaining how the team will approach the project to provide the City maximum value for the investment. Describe how the team has worked on similar public aquatic facility condition assessment projects in the past.

5. **Supportive Information/Supplemental Questions (Attachment 1)**

Provide answers to all of the questions in **Attachment 1** in the same order as they are listed. Repeat the question at the heading of each of your answers.

6. **References**

List similar public sector aquatic facility condition assessment projects completed by the proposed team in the last 10 years. Provide the following for each project listed:

- Project Name, Location, Date of Completion.
- Identify which Members of the Team worked on the project and what service they provided.
- Reference Name and Phone Number. The Reference should be part of the Client's Staff with direct experience with the Team and the Work they completed on the Project.

7. **Cost Proposal/Hourly Rates**

**Failure to provide the Cost/Hourly Rates within the Proposal as required above may result in the Proposal being determined Non-Responsive and may be eliminated from evaluation.**

8. **Conflict of Interest Statement & Requirements**

The prospective consultant shall disclose any financial, business or other relationship with the City that may have an impact upon the outcome of this consultant services agreement. The prospective consultant shall also list current clients who may have a financial interest in the outcome of this consultant services agreement.

- 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 working for consultants providing services or performing work for the City, if such individuals 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 individuals who qualify as "consultants" to file the following statements of economic interests with the City:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the consultant;
- (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 agreement.

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 standard agreement attached to this RFP indicates whether or not the individual(s) who will provide services or perform work pursuant to the agreement will be considered "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code. The submission of a proposal in response to this RFP constitutes the proposer's acknowledgement and agreement that, if the proposer is awarded the agreement by City, the individuals who will provide services or perform work

pursuant to the agreement will not have a conflict of interest under the City's Conflict of Interest Code.

In addition, if the proposer is awarded the agreement by City, such proposer shall cause the following to occur within 30 days after execution of the agreement:

- (1) The proposer shall identify the individuals who will provide services or perform work under the agreement as "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code;
- (2) The proposer shall cause these individuals to file with the City Representative identified in the agreement the "assuming office" statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the agreement, the proposer 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 portions of any payment due under the agreement until all required statements are filed.

**9. Insurance Coverage**

List current insurance coverage for the lead firm. Provide insurance carrier's name and level of coverage for General Liability, Auto Liability, and Professional Liability. Also state policy number and effective date of Workers' Compensation coverage.

**10. Local Business Enterprise (LBE) Forms**

The attached sub consultant and LBE participation forms in Appendix D must be completed in order to be considered responsive. If either of these two forms are missing, the submittal may be considered non-responsive and the firm will be eliminated from evaluation.

Any proposal submitted by a firm that is certified as an Local Business Enterprise (LBE) by the City of Sacramento will receive a five percent (5%) proposal evaluation preference for the purpose of determining the highest ranking proposal.

**11. Sample Consultant Services Agreement**

Each firm is required to read the attached sample consultant services agreement (Appendix E) and list any questions or concerns they have regarding the attached consultant services agreement for consideration by the City. Failure to itemize questions or concerns on the consultant services agreement in the RFP submittal will provide sufficient grounds for disqualification of any team during selection and/or negotiations.

**12. Addenda and Additional Information**

Addenda related to this RFP must be acknowledged in writing. RFP submittals missing acknowledgement of any addendum or information requested in this RFP may be considered non-responsive and the firm will be eliminated from evaluation.

## APPENDIX B

### GENERAL INFORMATION

#### 1. Consultant Selection Process

The consultant selection process is described below.

- A. After the period has closed for receipt of proposals, each proposal will be examined to determine compliance with the format requirements specified in the RFP. Any proposal that does not meet the format requirements will be eliminated from competition. The City may reject any proposal if it is conditional, incomplete, or contains irregularities. The City may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the Request for Proposal documents or excuse the proposer from full compliance with the agreement requirements if the proposer is awarded the agreement. All mandatory requirements must be met or the proposal will be deemed non-responsive and eliminated from evaluation.
- B. A Consultant Selection Panel (CSP) will review each technical proposal that meets the format requirements. CSP members will individually evaluate and score each technical proposal in accordance with the scoring system shown in Appendix C.
- C. Following independent evaluation of the written proposal, the top five highest scoring firms will be requested to participate in a consultant interview. After interviewing each firm, the CSP will make a selection of which firm will be selected. However, the City reserves the right to choose the consultant on the basis of the written proposal and funding availability only.
- D. The Department of Parks & Recreation will request that the top ranked consultant firm to enter into negotiations. If agreement is reached, the firm will be recommended for award, subject to approval by the City Manager. If agreement cannot be reached with the top ranked firm, the Department of Parks & Recreation will close negotiations and may enter into negotiations with the second ranked firm and so on.

#### 2. Late Submittal

A proposal for professional services (PPS) is late if received at any time after the required submittal date and time. A PPS received after the specified time will not be considered and deemed non-responsive.

#### 3. Modification or Withdrawal of Submittal

Any PPS received prior to the date and time specified above for receipt of PPS may be withdrawn or modified by written request of the proposer. To be considered, however, the modified PPS must be received by the time and date specified above.

4. Written Questions

Written questions should include the individual's name, address and must reference this RFP. Questions should be mailed to the following addresses:

**For technical questions:**  
**Jill Nunes, Recreation Superintendent**  
**City of Sacramento, Department of Parks & Recreation - Aquatics**  
**4623 T Street**  
**Sacramento, CA 95819**  
**Email only: [jnunes@cityofsacramento.org](mailto:jnunes@cityofsacramento.org)**

**For contractual questions:**  
**Tim Hopper, Contract Services**  
**City of Sacramento**  
**Department of Public Works**  
**5730 24<sup>th</sup> Street, Building #4**  
**Sacramento, California 95822-3604**  
**Email only: [thopper@cityofsacramento.org](mailto:thopper@cityofsacramento.org)**

**Questions received after 10/14/2015 shall not be considered.**

5. Signature

The PPS shall be transmitted with a cover letter that must be signed by an official authorized to bind the prospective consultant contractually and contain a statement that the PPS is a firm offer for a 90-day period.

The signed cover letter constitutes certification by the prospective consultant, under penalty of perjury, of the debarment and suspension certificate required under Part 29, Title 49, CFR, and also constitutes certification under penalty of perjury, that the prospective consultant complies with non-discrimination requirements of the State and the Federal Government.

An unsigned PPS or one signed by an individual not authorized to bind the prospective consultant will be rejected.

6. Property Rights

A PPS received within the prescribed deadline becomes the property of the City and all rights to the contents therein become those of the City.

7. Amendments to Request for Proposals

The City reserves the right to amend the RFP by addendum prior to the final PPS submittal date. The City also reserves the right to extend the proposal due date, or to cancel this RFP at any time.

RFP submittals missing acknowledgement of any addendum or information requested in this RFP may be considered non-responsive and the firm will be eliminated from evaluation.

8. Non-Commitment of City

This RFP does not commit the City to award an agreement, to pay any costs incurred in the preparation of a PPS for this request, or to procure or an agreement for services. The City reserves the right to accept or reject any or all PPS's received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the City to do so.

9. Award of Agreement

It is anticipated that compensation under any agreement resulting from this Request for Proposals (RFP) will be a not-to-exceed amount. **The agreement will be a one-year term agreement.** Negotiations to establish the agreement amount shall take place after the consultant selection process is completed.

Any agreement awarded as a result of this RFP will be awarded without discrimination based on race, color, religion, age sex, or national origin.

The prospective consultant will be required to adhere to the provisions of a fully executed agreement. Provisions of the agreement shall be based on a standard agreement approved by the City Attorney. Appendix E is a sample of this standard agreement.

10. Execution of Agreement

The prospective consultant is advised that should this RFP result in recommendation for award of an agreement, the agreement will not be in force until it is approved and fully executed by the City.

11. Public Domain

All products used or developed in the execution of any agreement resulting from this RFP will remain in the public domain at the completion of the agreement.

12. Coordination

Coordination of consultant and City activities will be accomplished through a Consultant Project Manager and the City Project Manager. The Consultant Project Manager shall not be removed from the project during the course of work without City approval.

The Consultant shall carry out instructions as received from the City Project Manager and shall cooperate with the City and any other consultants working on the project.

It is not the intent of the foregoing paragraph to relieve the consultant of his professional responsibility during the performance of this agreement. In those instances where the consultant believes a better plan, methodology or solution to the problem is possible, he shall promptly notify the City Project Manager of these concerns, together with the reasons therefore.

**APPENDIX C**

**REQUEST FOR PROPOSALS FOR  
AQUATIC FACILITY CONDITION ASSESSMENT SERVICES**

**EVALUATION CRITERIA WORKSHEET**

<b>WRITTEN PROPOSAL</b>	<b>MAXIMUM POINTS</b>	<b>REVIEWER SCORE</b>
<b>INTRODUCTORY LETTER</b> – SUMMARY OF CONSULTANT’S PROPOSALS, EXPERIENCE AND ABILITY TO PERFORM AQUATIC FACILITY CONDITIONS ASSESSMENT SERVICES AS REQUIRED UNDER THE RFP.	<b>5</b>	
<b>PROJECT TEAM</b> – TEAM ORGANIZATION, PROPOSALS AND EXPERIENCE OF THE FIRM ON SIMILAR PROJECTS. EXPERIENCE WITH CITY OR, STATE AQUATIC FACILITY CONDITIONS ASSESSMENT PROJECTS. APPROPRIATE CERTIFICATION OF KEY PERSONNEL.	<b>20</b>	
<b>AVAILABILITY</b> - KEY PERSONNEL ARE AVAILABLE AND COMMITTED TO THE PROJECT. ABILITY TO RESPOND TO REQUESTS FOR AQUATIC FACILITY CONDITIONS ASSESSMENTS IN A TIMELY MANNER.	<b>20</b>	
<b>WORKPLAN</b> – ASSIGNMENT, UNDERSTANDING, AND ORGANIZATION OF TASKS, UNDERSTANDING OF INTERRELATIONSHIP OF CRITICAL TASKS, WILLINGNESS TO SIGN PROFESSIONAL SERVICES AGREEMENT WITH THE CITY.	<b>20</b>	
<b>OVERALL PRESENTATION IN SUBMITTAL OF PROPOSALS-</b> GENERAL PROJECT UNDERSTANDING, EXAMPLES OF CRITICAL ISSUES, FIRMS INNOVATION IN COMING UP WITH AQUATIC FACILITY CONDITIONS ASSESSMENT SOLUTIONS.	<b>15</b>	
FEE/PRICE SCHEDULE IN SEPARATE SECTION OF THE PROPOSAL	<b>10</b>	
ATTACHMENT 1-SUPPLEMENTAL QUESTIONS	<b>10</b>	
<b>SUBTOTAL</b>	<b>100 Points</b>	
<i>Certified as an LBE by the City of Sacramento</i>	<b>5 %</b>	
<b>GRAND TOTAL POINTS</b>	<b>105</b>	
<b>MANDATORY REQUIREMENTS**</b>		
FEE/PRICE SCHEDULE IN SEPARATE SECTION OF THE PROPOSAL	<b>YES OR NO</b>	
LBE FORMS SUBMITTED (APPENDIX D)	<b>YES OR NO</b>	
ACKNOWLEDGEMENT OF ALL ADDENDUM(S)	<b>YES OR NO</b>	

**\*\*FAILURE TO MEET THE MANDATORY REQUIREMENTS MAY RESULT IN A NON-RESPONSIVE SUBMITTAL AND THE FIRM MAY BE ELIMINATED FROM FURTHER CONSIDERATION**

## APPENDIX D

### LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION PROGRAM

**NOTE: Proposers must provide responses to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of the proposal.**

#### 1. LBE FIVE PERCENT (5%) PARTICIPATION

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference and authorized City departments to require minimum LBE participation levels in individual contracts. Under City Code section 3.60.270, when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has established a minimum 5% participation level for LBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
  - a. The LBE's principle business office or workspace; or
  - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

#### A. LOCAL BUSINESS ENTERPRISE (LBE)

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

- YES** - the firm submitting the bid is qualified as a local business enterprise.
- NO** - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

\_\_\_\_\_

If the response to the above is YES, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address\*:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\* Address must be a physical address for the basis of location, this excludes P.O. Box addresses.

*City of*  
**SACRAMENTO**

**Local Business Enterprise (LBE)  
Participation Verification Form**

**Professional and Nonprofessional Service Agreements of \$100,000 or More**

THIS FORM MUST BE SUBMITTED WITH THE PROPOSAL OR BID

IF A SEPARATE SEALED COST ESTIMATE IS REQUIRED, THIS FORM MUST BE INCLUDED WITH THE SEALED COST ESTIMATE

To be eligible for this agreement, the proposer or bidder shall list below all the business entities used to attain the 5% LBE participation requirement. Estimated dollar values shall be provided for all work / services listed. The failure to attain the 5% LBE participation or the inclusion of false information or the omission of required information will render the proposal or bid non-responsive.

Proposer/Bidder Name: \_\_\_\_\_ Proposal/Bid Amount: \_\_\_\_\_ Is the Proposer/Bidder a LBE? Yes \_\_\_ No \_\_\_

LBE Business Entity Name and Address (subject to verification)	Description of Work or Services to be provided	Estimated Dollar Value of Work or Services

The Proposer/Bidder hereby certifies that each business entity listed on this LBE Participation Verification Form has been notified that it has been listed and has consented in writing to its name being submitted for this proposal or bid. The Proposer/Bidder also certifies that it will notify each business entity listed on this Form in writing if the agreement is awarded to the Proposer/Bidder, and will make all documentation relevant to the listed business entities and LBE participation available to the City of Sacramento upon request. The Proposer/Bidder further certifies that all of the information contained in this Form is true and correct and acknowledges that the City will rely on the accuracy of this information in awarding the agreement.

COPY AND ATTACH ADDITIONAL SHEETS AS NECESSARY

Form Revised 2/3/2014

LOCAL BUSINESS ENTERPRISE (LBE)  
PREFERENCE PROGRAM REQUIREMENTS  
(City Contracts, no Federal Funds Used)

I. LBE PREFERENCE PROGRAM

On April 3<sup>rd</sup>, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference.

The LBE Program provides for a five percent (5%) preference on all City procurement opportunities under \$100,000. For professional service contracts only, this preference also applies to procurement opportunities of \$100,000 or more.

A bid or quotation submitted by a firm that is located within Sacramento City and/or the unincorporated county of Sacramento will receive a five percent (5%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 5% bid evaluation preference, the bid of an LBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid.

Bidders shall submit proof to the City demonstrating that the business is in compliance with all applicable laws relating to licensing and is not delinquent on any City of Sacramento or County of Sacramento taxes, permits, or fees.

II. LBE QUALIFICATION

- A. A LBE designated in the bid must be qualified as a LBE prior to the time set for submission of bids.
- B. Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Proof of legitimate business presence in the city or unincorporated county of Sacramento shall include:
  - 1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License for at least twelve (12) consecutive months prior to submission of bid; and
  - 2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento for at least twelve (12) consecutive months prior to submission of bid:
    - a. The LBE's principle business office or workspace; or
    - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.
- C. A LBE must provide a physical address for the basis of location. This excludes P.O. Box addresses.

- D. A LBE must provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

### III. APPLICATION OF LBE PREFERENCE

- A. When applying the LBE preference to a Bid, the preference shall apply to the bid price solely for Bid evaluation purposes such that the total price bid by a Local Business shall be reduced by five percent (5%) of the amount bid by that Local Business, and the reduced Bid amount shall be deemed the amount bid by that bidder. The Contract price shall in all events be the amount Bid by the successful bidder awarded the Contract.
- B. When applying the LBE preference to a Proposal, the preference shall apply in the form of additional points to the Proposal's final score such that the score awarded to a Proposal submitted by a Local Business is increased by five percent (5%) of the total possible evaluation points.
- C. The LBE preference shall apply to all City procurement opportunities under \$100,000 and professional service contracts of \$100,000 or more.

### IV. DEFINITIONS

- A. Local Business Enterprise (LBE): A business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or any other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento.
- B. Proposal: Any response to a City solicitation for Proposals or Qualifications.
- C. Bid: Any response to a City solicitation for bids.

## APPENDIX E

### SAMPLE CONSULTANT AGREEMENT

CITY OF SACRAMENTO

#### PROFESSIONAL SERVICES AGREEMENT \*

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

*Name of Contractor*

*Address*

*Phone/Fax*

(“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.

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

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: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

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

ATTEST:

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

Attachments

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

**CONTRACTOR:**

\_\_\_\_\_  
NAME OF FIRM

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

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

\_\_\_\_\_  
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

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

\_\_\_\_\_  
**Signature of Authorized Person**

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

---

Additional Signature *(if required)*

---

Print Name and Title

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

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

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

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

employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.

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

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

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT**

**SCOPE OF SERVICES**

**1. Representatives.**

The CITY Representative for this Agreement is:

*Name/Title*  
*Address*  
*Phone/Fax/E-mail*

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:

*Name/Title*  
*Address*  
*Phone/Fax/E-mail*

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;
- (4) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (5) 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:

- (3) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (4) 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.** *[Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]*

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

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

## EXHIBIT B

### PROFESSIONAL SERVICES AGREEMENT

#### FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$\_\_\_\_\_.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)

- (8) Total Billed to Date
- (9) Total Remaining on Contract
- (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*Office  
Address  
Phone/Fax*

*Attn: \_\_\_\_\_*

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



**EXHIBIT C**

**NONPROFESSIONAL SERVICES AGREEMENT**

**FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall [*check one*]

\_\_\_\_\_ Not furnish any facilities or equipment for this Agreement; or

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

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

**GENERAL PROVISIONS**

**1. Independent Contractor.**

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR.

CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

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

discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

## **7. CONTRACTOR Information.**

A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5)

days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

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

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of

termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

- (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
- (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

## **10. Indemnity.**

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

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

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

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

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
  
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this agreement.” \_\_\_\_\_ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

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

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

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

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

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

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

B. Additional Insured Coverage

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

C. Other Insurance Provisions

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

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

- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento  
c/o Ebix RCS

Reference #: (This number will be provided by EBIX after Agreement approval.)  
PO Box 257  
Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to:  
CertsOnly-Portland@ebix.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

**12. Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246

entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
  - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto.

CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its

assignees and successors in interest, agrees as follows:

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

## APPENDIX F

### SPECIAL PROVISIONS

#### 1. Record Retention

The Consultant agrees to keep proper books of records and account in which complete and correct entries will be made of payroll costs, travel, subsistence and field expenses. Said books shall, at all times, be available for at least three (3) years after final payment for reasonable examination by the City.

#### 2. Accuracy and Completeness

The Consultant has total responsibility for the accuracy and completeness of the investigations, calculations, reports, plans and related work prepared for the Project and shall check all such material accordingly. The information will be reviewed by City for conformity with Project objectives and compliance with City and State Standards. The responsibility for accuracy and completeness of all items remains solely with the Consultant.

#### 5. Documentation

The Consultant shall document the results of all work to the satisfaction of the City. This may include, but not be limited to, preparation of progress and final reports, recommendations, and other records as required.

#### 6. Ownership of Documents

All documents prepared or obtained under this RFP shall be delivered to and become the property of the City.

#### 7. Copyrights

The Consultant shall not have copyrights of reports, materials, or products created, produced, or resulting from this Agreement.

#### 8. Changes in Work

The City reserves the right to change the Scope of Work as necessary. In the event that such a change would materially change the amount or character of the work reasonably considered necessary to perform under the original scope of this Agreement, an adjustment shall be negotiated based upon the estimated number of hours the revised or added task would consume.

**Supplemental Questions**

1. Describe in detail how your team is qualified for this work. Give specific examples of each of your team's strengths. What unique and special skills or experiences would your firm bring to working with the City?
2. Explain how your team would be organized. Provide information about the personnel that will be assigned to facilities assessment projects. State who would be responsible for decision making and describe how this process would benefit the City.
3. Describe how your team would approach and undertake aquatic facility condition assessment projects, particularly within tight budget parameters.
4. What challenges do you foresee in assessing aquatic facility conditions for the City of Sacramento?
5. Provide at least two examples of similar past projects for which team members have successfully completed an aquatic facility assessment. Include project name, client contact, address, telephone number and names of individual(s) from your team responsible for the majority of the work.
6. Describe your firm's cost estimating methods for aquatic maintenance projects similar to this. Provide recent examples of how your estimates compared to actual aquatic maintenance costs.

**List of Aquatic Facilities (Pools and Wading Pools)**

Cabrillo Pool & Wading Pool	1648 65 <sup>th</sup> Ave
Clunie Pool & Wading Pool	601 Alhambra Blvd. in McKinley Park
Doyle Pool & Wading Pool	2827 Mendel Way
George Sim Pool & Wading Pool	6207 Logan Street
Glenn Hall Pool	5415 Sandburg Drive
Johnston Pool & Wading Pool	231 Eleanor Ave
Mangan Pool	2140 34 <sup>th</sup> Ave
McClatchy Park Pool & Wading Pool	3500 5 <sup>th</sup> Ave
Oki Pool & Wading Pool	2715 Wissemann Dr.
Pannell Meadowview Pool & Wading Pool	2450 Meadowview Rd.
Southside Pool & Wading Pool	2107 6 <sup>th</sup> Street
Tahoe Pool & Wading Pool	3501 59 <sup>th</sup> Street
Bertha Henschel Play Pool	160 45 <sup>th</sup> Street
Colonial Play Pool	18th Ave. & 53 <sup>rd</sup> Street
Mama Marks Play Pool	1140 Roanoke Ave
Robertson Play Pool	3525 Norwood Ave
William Land Play Pool	13 <sup>th</sup> Street & 13 <sup>th</sup> Ave

PROJECT #:  
PROJECT NAME: Citywide Pool Assessment  
DEPARTMENT: Parks & Recreation  
DIVISION: Aquatics

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 \_\_\_\_\_, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

JEFF KATZ ARCHITECTURAL CORP  
280 BETTENCOURT STREET, SONOMA, CA 95476  
Phone: 1.619.698.9177/ Email: [jeff@jeffkatzarchitecture.com](mailto:jeff@jeffkatzarchitecture.com)

("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: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

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

ATTEST:

\_\_\_\_\_

City Clerk

Attachments

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

**CONTRACTOR:**

JEFF KATZ ARCHITECTURAL CORP

NAME OF FIRM  
46-4449528

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

State I.D. No.  
1024073

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  
JEFF KATZ, PRESIDENT/SECRETARY

Print Name and Title

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

Print Name and Title

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: JEFF KATZ ARCHITECTURAL CORP

Address: 280 BETTENCOURT STREET, SONOMA, CA 95476

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.

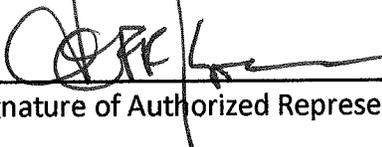
4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the 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

1/21/16  
Date

JEFF KATZ

Print Name

PRESIDENT

Title

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS**

**SCOPE OF SERVICES**

**1. Representatives.**

The CITY Representative for this Agreement is:

JILL NUNES, RECREATION SUPERINTENDENT  
4623 T STREET, SACRAMENTO, CA 95819  
Phone: 1.916.808.6095/E-mail: [jnunes@cityofsacramento.org](mailto:jnunes@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:

JEFF KATZ, AIA, PRINCIPAL IN CHARGE  
JEFF KATZ ARCHITECTURAL CORP  
280 BETTENCOURT STREET, SONOMA, CA 95476  
Phone: 1.619.698.9177/ Email: [jeff@jeffkatzarchitecture.com](mailto:jeff@jeffkatzarchitecture.com)

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

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

**3. Conflict of Interest Requirements.**

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

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

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

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

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

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

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

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

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

#### 4. Scope of Services.

**4. Scope of Services.**

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

**5. Time of Performance.** All work to be completed by August 31, 2016.

## **SCOPE OF SERVICES**

JKA Architecture will provide facility condition assessment and evaluation services. In general:

- Determine existing conditions of City facilities by conducting on-site inspections and audits, examining records, consulting with City staff, and other tasks as required.
- Recommend corrective measures, estimating the costs of the corrections, and providing comparisons and evaluations among a range of possible corrective actions.

**Full Facility Assessment:** Including all site utilities, paved areas, pedestrian walkways, fencing and gates, exterior lighting and landscaping, plumbing, electrical, ADA compliance, hazardous materials, foundations and substructures, structural systems, exterior wall systems and roofing membrane systems, and a detailed lifecycle analysis indicating remaining useful life of existing infrastructure, buildings and systems for the following aquatic sites:

- Cabrillo Pool & Wading Pool
- Clunie Pool & Wading Pool
- Doyle Pool & Wading Pool
- George Sim Pool & Wading Pool
- Glen Hall Pool
- Johnston Pool & Wading Pool
- Mangan Pool
- McClatchy Pool & Wading Pool
- Oki Pool & Wading Pool
- Pannell Meadowview Pool & Wading Pool
- Southside Pool & Wading Pool
- Tahoe Pool & Wading Pool
- Bertha Henschel Play Pool
- Colonial Play Pool
- Mama Marks Play Pool
- Robertson Play Pool
- William Land Play Pool

**JKA Architecture will prepare a report based on the needs identified at each aquatics facility. JKA Architecture will assess the following systems:**

- 1) Overall condition of swimming pools
- 2) Swimming pool equipment and decks

- 3) Filtration systems, including adequacy of existing filtration, recirculation and sanitation systems – hydro calculations
- 4) Chemical feed systems
- 5) Underground plumbing
- 6) Swimming pool vessels and the associated structural systems
- 7) Determine existing conditions
- 8) Recommend corrective measures, including short and long term corrections, replacement needs with estimated costs and an estimated budget planned life cycle costs and obsolescence information
- 9) Compare existing pool vessels and their gutter, filtration, and recirculation systems, especially underground plumbing and overall enclosure with the 2007 CBC, NEC, MEC, T-24 and ADA
- 10) Determine compliance with current codes
- 11) Prepare volume and hydraulic calculations, including destructive testing when necessary
- 12) Approximate structural life expectancy
- 13) Financial efficacy of renovation versus replacement, cost of renovation and/or repair
- 14) Adequacy of existing systems
- 15) Costs to upgrade to include enhancements such as slides or play features
- 16) Costs of Architectural/Engineering services to proceed with chosen alternatives
- 17) Evaluate structural systems (if as built) drawings exist
- 18) Analyze hazardous material storage and potential for mold or algae, source water conditions.
- 19) Soils testing and engineering, including preparation of a geotechnical investigation report.
- 20) Adequacy of existing public utilities such as sanitary sewer, storm drainage/site drainage, domestic water, natural gas, and electrical distribution.

The final reports will include detailed evaluations of the following:

All Site Utilities / Paved Areas / Pedestrian Pathways / Fencing and Gates / Exterior Lighting and Landscaping at the aquatic sites listed

Review of the infrastructure related to each building will include site utilities, paved areas, pedestrian pathways, fencing, gate, exterior lighting and landscaping. Area parking lots and roadway surfaces leading into or out of the properties will be inspected for general condition of the asphalt-paved areas.

The inspections will address the adequacy of storm/water drainage provisions, and identify and comment on the remaining useful life span of the paved areas. Typical items will include cracking, stripping sub-grade failure, alligator cracking, rutting and re-striping requirements. Fencing and gates associated with the property will be specifically reviewed for egress, functionality of the gates and general condition of the fencing and gates.

All exterior lighting will be reviewed for adequacy of area lighting both in the surrounding hard scape and parking facilities. Non-functional, deteriorated or broken lighting fixtures will be identified. Landscaping will be reviewed for general condition and operational function and maintenance of the sprinkler system.

#### Plumbing

The intent of the plumbing inspection is to review the operational function and condition of the existing plumbing systems. Inspection will include review of the water system, sanitary and storm system, drinking fountains and plumbing fixtures. Inspection will include estimation of remaining usefulness and service life of fixtures and equipment.

#### Electrical / Lighting

The intent of this area of inspection is to address, in general, the electrical serviceability and usability of the electrical systems and equipment. This inspection will include a review of applicable raceway, bus ways, under floor raceways, conductors, cable systems, outlets, switchboards/panel boards, grounding, main panel and sub-panel and general wiring conditions. Review of lighting will include general conditions of light fixtures and associated equipment, as well as general layout and illumination output.

#### ADA Compliance

Any requested ADA reviews may address the presence of general access and egress provisions for staff as well as the general public. From the entry to the aquatic facilities assessment will include door pressure testing, door width and setback provisions, and proper clearance for wheelchair access to toilets and other public access areas. Lighting and signage will also be reviewed for compliance to current ADA requirements.

#### Hazardous Materials

The consultant may be asked to perform a visual hazardous materials survey (asbestos building materials, lead-based paint, potential PCB-containing electrical equipment, mercury, vapor-containing equipment, mold inspection, and underground storage tank). The visual asbestos building materials survey will be performed by an asbestos consultant under the Asbestos Hazards Emergency Response Act and certified by Cal-OSHA. A Department of Health Services certified Inspector will perform the visual lead based paint survey.

A Registered Environmental Assessor accredited by the California Environmental Protection Agency (EPA) may be requested to conduct a survey of PCB-containing electrical equipment, mercury vapor-containing equipment, potential mold and underground storage tank (UST's). In the past, oil containing PCB's has been used in electrical equipment, such as transformers and fluorescent light ballasts, as a dielectric insulating fluid for heat dissipation. Manufacturing of PCB's was banned in 1976; however, distribution of electrical equipment with PCB's was still allowed after that time. The presence, locations, and condition of suspected mercury vapor-containing equipment will be evaluated visually.

#### Foundations / Substructures / Structural Systems

All accessible foundation walls, slab floors, concrete and masonry components will be inspected for structural cracks heaving or subsidence or other signs of significant

deterioration or distress, including observation specific to adequacy of drainage provisions.

#### Exterior Wall System

All exterior building finishes will be inspected for damage or deterioration to stucco, wood siding, concrete, masonry block or brick lay-up and paint protected coated surfaces. Assessment of damage or deterioration to exterior exposed wood framed or timber supported structures such as awnings or other components will also be performed. Inspections will also include review of window and door systems.

#### Roofing Membrane System

The roofing membrane system will be visually inspected for damage or otherwise deteriorated roofing systems to include review for adequacy of drainage and flashing as well as evidence of water infiltration into the building envelope. Specific materials and components that exhibit evidence of deferred maintenance and may require replacement before what would be considered standard life expectancy will be identified.

#### Ceiling Systems / Floor Coverings / Interior Wall and partition Systems

All inspections of the building interior will include a review of the ceiling systems, flooring systems and floor coverings and interior walls and partition systems. Ceilings and surfaces around doors, windows and roof penetrations will be inspected for evidence or signs of leakage. Ceiling lines will be inspected for structural evidence of irregular sloping or sagging associated with the structural roof support system. Floor surfaces will be reviewed for damage or above normal wear and tear.

#### Fire Protection and Life Safety Systems

The purpose of this area of inspection is to identify the existence of and operational function of a fire protection system or devices for all occupied spaces. The system and associated equipment, such as fire extinguishers, will also be reviewed for compliance to current code.

It is anticipated that final work products produced shall include:

- A comprehensive, justifiable list of deficiencies and scheduled maintenance needs of each requested site.
- A list of immediate, short-term and long-term corrections and replacement needs with estimated costs for each requested site.
- Development of replacement values for requested City aquatic facilities.

**EXHIBIT B**

**PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS**

**FEE SCHEDULE/MANNER OF PAYMENT**

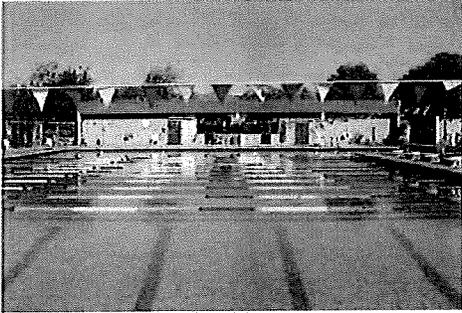
1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of **ONE HUNDRED EIGHTY FIVE THOUSAND DOLLARS AND NO CENTS (\$185,000.00)**.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, but not to exceed the lump sum amounts, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
  - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
  - B. All invoices submitted by CONTRACTOR shall contain the following information:
    - (1) Job Name
    - (2) Description of services billed under this invoice, and overall status of project
    - (3) Date of Invoice Issuance
    - (4) Sequential Invoice Number
    - (5) CITY's Purchase Order Number
    - (6) Total Contract Amount
    - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
    - (8) Total Billed to Date
    - (9) Total Remaining on Contract
    - (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.

Digitally signed by Jeff Katz  
DN: cn=Jeff Katz, o=City of Seattle  
Jeff Katz  
Date: 2018.02.11 16:23:06 -0800

- C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
- D. Requests for payment shall be sent to:

JILL NUNES, RECREATION SUPERINTENDENT  
4623 T STREET, SACRAMENTO, CA 95819  
Phone: 1.916.808.6095/E-mail: jnunes@cityofsacramento.org

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.



# HOURLY RATES

The following rates apply to work performed on an hourly basis.



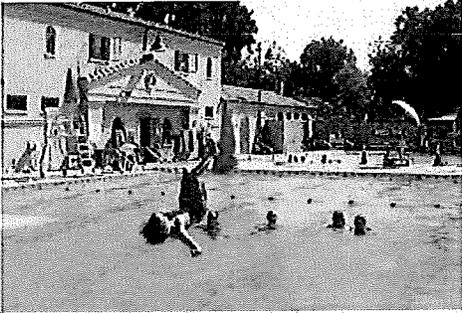
Principal Architect \$ 190.00 per hour

Project Manager \$ 145.00 per hour

Design Manager \$ 130.00 per hour

Job Captain \$ 115.00 per hour

Specification Writer \$ 125.00 per hour



Construction Admin \$ 140.00 per hour

Drafter \$ 90.00 per hour

Secretarial \$ 70.00 per hour

Structural Engineer \$ 170.00 per hour

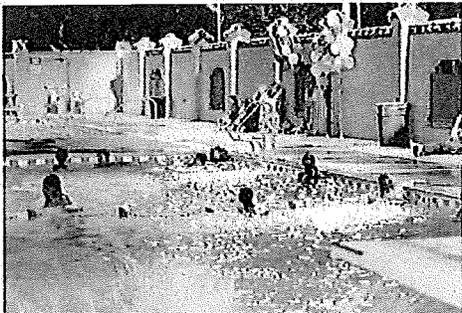
Civil Engineer \$ 170.00 per hour



Mechanical Engineer \$ 160.00 per hour

Electrical Engineer \$ 150.00 per hour

Landscape Architect \$ 150.00 per hour



Reimbursable Expenses will be charged at 1.1 times the direct cost.

ATTACHMENT 1 TO EXHIBIT B

# SCHEDULE OF VALUES

ATTACHMENT 1A TO EXHIBIT B

**CITY OF SACRAMENTO**  
Parks and Recreation

**PROJECT NAME:** CITYWIDE POOL ASSESSMENT  
**CONTRACT NO:**  
**CITY PROJ. NO:**  
**FUNDING:**  
**CONTRACTOR:** JKA ARCHITECTURE  
**ADDRESS:** 6353 DEL CERRO BLVD.  
 SAN DIEGO, CA 92120  
**PHONE NO:** 619.698.9177

Pay Request Number \_\_\_\_\_  
 Work Performed Thru \_\_\_\_\_  
 Date Pay Request was Submitted \_\_\_\_\_  
 Number of Contract Days Expended \_\_\_\_\_

Item No	Item Description	Original Contract Quantity	Unit	Unit Price	Original Contract Amount	CCO Adjusted Quantities	Previously Paid		This Estimate		Total Work Completed		Balance of Contract	
							Quantity	Amount	Quantity	Amount	Quantity	Amount	Quantity	Amount
1	SITE INVESTIGATION	1	LS	\$92,500.00	\$92,500.00								1.00	\$92,500.00
2	PRELIMINARY REPORT	1	LS	\$74,000.00	\$74,000.00								1.00	\$74,000.00
3	FINAL REPORT	1	LS	\$18,500.00	\$18,500.00								1.00	\$18,500.00
1	CCO#1													
2	CCO#2													
3	CCO#3													
4	CCO#4													
Original Contract Amount						\$185,000.00								
CCO Adjusted Contract Amount						\$185,000.00								
							Previous Total		Total This Estimate		Total to Date		Balancing Total	\$185,000.00
							Previously Paid							

**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

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

## 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 Information.**

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

information.

- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

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

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
  - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

- (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

**10. Indemnity.**

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

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

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

for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

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

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." \_\_\_\_\_ (CONTRACTOR initials)

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

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

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

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

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

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

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

B. Additional Insured Coverage

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

C. Other Insurance Provisions

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

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

- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY in writing prior to execution of this Agreement.

E. Verification of Coverage

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

- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento  
c/o Ebix RCS

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

PO Box 257

Portland, MI 48875-0257

Insurance certificates also may be faxed to (770) 325-3340, or e-mailed to:  
CertsOnly-Portland@ebix.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

**12. Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
  - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR

becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
  - A. **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
  
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

## **EXHIBIT E**

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

#### **INTRODUCTION**

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

#### **APPLICATION**

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

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

#### **DEFINITIONS**

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

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

“Contract” shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm, partnership, 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.

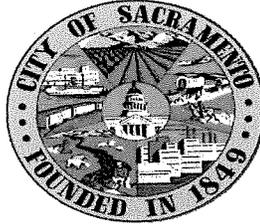
#### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(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.



Named Insured: Jeff Katz Architectural Corporation  
Policy Number: PSB0005510

RLI Insurance Company

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **RLIPack<sup>®</sup> FOR PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM - SECTION II - LIABILITY**

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
  - a. In the performance of your ongoing operations;
  - b. In connection with premises owned by or rented to you; or
  - c. In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
  - b. This insurance does not apply to the rendering of or failure to render any "professional services".
  - c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance - COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II - LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
  - b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.
4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us - COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II - LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

**BUSINESS AUTO COVERAGE FORM**

**A. Broad Form Named Insured**

The following is added to the **SECTION II – LIABILITY Coverage**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

**B. Employees As Insureds**

The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

**C. Blanket Additional Insured**

The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

**D. Blanket Waiver Of Subrogation**

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**E. Employee Hired Autos**

1. The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance Condition** in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**F. Fellow Employee Coverage**

**SECTION II – LIABILITY COVERAGE, Exclusion B.5.** does not apply if you have workers compensation insurance in-force covering all of your employees.

**G. Auto Loan Lease Gap Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance**, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less: