

Meeting Date: 8/23/2016

Report Type: Consent

Report ID: 2016-00798

Title: Agreement: Quicklime for Water Treatment Plants

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to execute an agreement with Graymont Western through June 30, 2017 for the purchase of Quicklime in an amount not-to-exceed \$337,000.

Contact: Michael Malone, Operations Manager, (916) 808-6226; Dave A. Phillips, O&M Superintendent, (916) 808-5652, Department of Utilities

Presenter: None

Department: Department Of Utilities

Division: Water Production Operations

Dept ID: 14001111

Attachments:

1-Description/Analysis

2-Agreement

City Attorney Review

Approved as to Form

Joe Robinson

8/3/2016 5:35:17 PM

Approvals/Acknowledgements

Department Director or Designee: Bill Busath - 7/28/2016 12:12:20 PM

Description/Analysis

Issue Detail: The Department of Utilities (DOU) operates two water treatment plants within the City. As part of the treatment and production process, quicklime is used to control corrosion throughout the distribution system and to help control taste and odor issues with potable water.

Policy Considerations: The recommendations in this report are consistent with provisions of City Code Section 3.56.090, which requires Council approval for any contracts of \$100,000 or more.

Economic Impacts: None

Environmental Considerations: The use of quicklime is an ongoing activity at the City's water plants. The use of these chemicals is regulated by State permit requirements.

California Environmental Quality Act (CEQA): The Community Development Department, Environmental Services Manager has determined that the proposed activity is not a project pursuant to the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15378(b). The activity is a continuing administrative or maintenance activity, such as the purchase of supplies, and is not subject to CEQA. CEQA Guidelines Section 15060(c)(3).

Sustainability: Chemicals purchased under these contracts comply with Section 8 of the City's Sustainability Master Plan to continue to protect the City's sources of water.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: This commodity was competitively bid under advertisement B16141111042. There were no bids received in response to the solicitation. Graymont Western has been the provider of quicklime to the City for the last 5 years and has agreed to fulfill the City's requirements for FY2016/2017. DOU staff recommends awarding this contract to Graymont Western to satisfy DOU's quicklime requirement for FY2016/2017 in an amount not-to-exceed \$337,000.

Financial Considerations: Sufficient funds are available in the approved FY2016/17 Department of Utilities Operating Budget.

Local Business Enterprise (LBE): Graymont is not an LBE. The minimum LBE participation requirement is waived for the procurement of supplies totaling greater than \$100,000 because of the limited number of local suppliers and subcontracting is generally not practical or financially beneficial to the City.

PROJECT #:
PROJECT NAME: QUICKLIME (CaO)
DEPARTMENT: UTILITIES
DIVISION: OPERATIONS AND MAINTENANCE

CITY OF SACRAMENTO
SUPPLIES AGREEMENT

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

*Graymont Western US, Inc.
3950 South 700 East, Suite 301, Salt Lake City, UT 84107
Phone: (801) 716-2640/Fax: (801) 264-8039*

("CONTRACTOR"), who agree as follows:

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

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

2. **Supplies.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the supplies, and ancillary services (if any), described in Exhibit A. CONTRACTOR shall provide said supplies and services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for supplies/services provided outside the scope of Exhibit A unless prior to providing such supplies/services: (a) CONTRACTOR notifies CITY and CITY agrees that such supplies/services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional supplies/services; and (c) CITY, after notice, approves in writing a contract supplement specifying the additional supplies/services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any contract supplement, unless and until this Agreement or any contract supplement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
3. **Payment.** CITY shall pay CONTRACTOR for supplies and ancillary services provided 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 supplies/services provided pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional supplies or ancillary services. CONTRACTOR shall submit all billings for said supplies/services to CITY in the manner specified in Exhibit B, or, if not specified

in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing supplies and ancillary services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The Special Provisions set forth in Exhibit D, and the General Provisions set forth in Exhibit E, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
7. **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.
8. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

ATTEST:

City Clerk

APPROVED TO AS FORM:

City Attorney

CONTRACTOR:

Graymont Western US Inc.
NAME OF FIRM

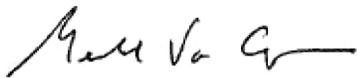
87-0335998
Federal I.D. No

1825630
State I.D. No.

116284
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

Gerald Van Campen, Vice President
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

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

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: **GRAYMONT WESTERN US, INC.**

Address: **3950 South 700 East, Suite 301, Salt Lake City, UT 84107**

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

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

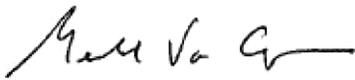
Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

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

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

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

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



Date: 10 August 2016

Signature of Authorized Representative

Print name: Gerald Van Campen

Title: Vice President

EXHIBIT A

SUPPLIES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Dave Phillips, Superintendent
Department of Utilities, 301 Water Street, Sacramento, CA 95822
Phone: (916) 808-5652/Fax: (916) 421-4596/Email: dphillips@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:

*Graymont Western US Inc./Robert Freeman
3950 South 700 East, Suite 301, Salt Lake City, UT 84107
Phone: (253) 428-6550/Fax: (801) 264-8039/Email: rfreeman@graymont.com*

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

2. Scope of Services.

All Quicklime provided by CONTRACTOR will meet or exceed the specifications in Attachment 1 to Exhibit A, incorporated herein by this reference.

3. Time of Performance. The initial term for this Agreement shall begin upon the date that the Agreement is authorized by the City Council and extend through June 30, 2017.

Attachment 1 to Exhibit A

TECHNICAL SPECIFICATIONS QUICKLIME (CaO)

The Quicklime (CaO) shall be furnished in accordance with these specifications.

QUALITY

The quicklime supplied shall be in accordance with AWWA Standard B202-93 and Addendum B202a-97 with exceptions as noted below. The quicklime shall contain a minimum of 90% available calcium oxide. The manufacturer or supplier shall provide an affidavit that the quicklime furnished under this specification complies with all applicable requirements of AWWA Standard B202-93 and Addendum B202a-97 at the time of delivery.

Also, the material shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF 60, Drinking Water Chemicals - Health Effects. The quicklime supplied under this specification shall contain no soluble material or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water that has been treated properly with the quicklime.

The quicklime supplied under this specification shall meet the following requirements:

1. The test for available calcium oxide shall be made in accordance with ASTM C25, Standard Methods of Chemical Analysis of Limestone, Quicklime and Hydrated Lime available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428.
2. The size as determined by physical analysis shall be 1/8" by 3/8". On average, 100% shall pass through a 1/2" mesh sieve; 65%, plus or minus 10% shall pass through a 1/4" mesh sieve; 25%, plus or minus 5% shall pass through a 1/8" mesh sieve; 7%, plus or minus 3%, shall pass through a #12 mesh sieve; and less than 7% shall pass through a #20 mesh sieve.
3. Quicklime shall contain not less than 90% available calcium oxide (CaO). Minimum temperature rise slaking shall be not less than 40°C in 3 minutes. The quantity of insoluble material in quicklime shall not exceed 2.5%.
4. The quicklime shall be of the quality known as "quick slaking" and shall slake satisfactorily, readily disintegrating into a suspension of finely divided material without the production of objectionable amounts of undissolved or unslaked material in the slaker. The quicklime will slake without objectionable amounts of insoluble material.

Failure to meet these requirements shall constitute a basis for rejection, at the option of the City, if confirmed by retest by the consignor or an acceptable recognized expert. If so rejected, consignor shall remove the material from the premises of the City without charge. The City may, in lieu of rejection and at its option, agree to a price adjustment for the material.

SDS, ANALYSIS DATA AND CERTIFICATION

Bidders shall supply the Safety Data Sheet, an analysis of the Quicklime, the manufacturer's specification sheet, and the manufacturer's labeling instructions as part of the bid package together with the location of the manufacturer's plant site. Bidders shall also supply proof with each shipment that the proposed product has

been certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF 60, Drinking Water Treatment Chemicals – Health Effects.

It is the responsibility of the supplier to inform the City of Sacramento that NSF or UL certification has been revoked or lapsed within 24 hours of the time the supplier receives verbal or written notification. Loss of certification shall constitute sufficient grounds for immediate termination of the contract between City of Sacramento and Contractor.

PLACEMENT OF ORDERS/DELIVERIES

Each order of quicklime will be placed for a quantity of 25 tons or more. The quantity specified on the bid sheet is for the purpose of comparing bids, and may be increased or decreased, by the City as its water treatment needs require.

Deliveries shall be made within three (3) working days after receipt of the order at any time during the contract period. Deliveries shall be made between 8:00 a.m. and 2:00 p.m., during which time the City will provide personnel to monitor the unloading of the quicklime from the delivery truck to the receiving storage. Unless otherwise directed, failure to observe this time constraint may result in a delay of the unloading to the following day, at no additional cost to the City. Quicklime shall be delivered to the following addresses:

Sacramento River Water Treatment Plant
(SRWTP)
301 Water Street
Sacramento, CA 95811

E.A. Fairbairn Water Treatment Plant
(EAFWTP)
7501 College Town Drive
Sacramento, CA 95826

SRWTP Primary Contact:

Amy Kral, Supervising Plant Operator
Office: (916) 808-5651
Cell: (916) 715-1675
Email: akral@cityofsacramento.org

EAFWTP Primary Contact:

Rod Frizzell, Supervising Plant Operator
Office: (916) 808-5165
Cell: (916) 879-8194
Email: rfrizzell@cityofsacramento.org

SRWTP Secondary Contact:

Plant Operations
Office: (916) 808-4962
Cell: (916) 798-7587
Email: RDare@cityofsacramento.org

EAFWTP Secondary Contact:

Plant Operations
Office: (916) 808-3120
Cell: (916) 798-7582
Email: HMoreland@cityofsacramento.org

Quicklime shall be delivered in covered, tight, hopper type trucks equipped to blow quicklime into above grade bins.

DELIVERY DOCUMENTATION AND PROTOCOL

The City of Sacramento delivery sites listed require an email from the Crystalline Sodium Fluoride supplier the day of delivery, at least an hour prior to arrival. Information listed below shall be emailed to the delivery facility contacts listed below prior to delivery. The email must contain the following information;

1. Security Information Sheet (Must include the following)
 - Delivery Location
 - Driver Information
 - Estimated Time of Arrival
 - Bill of Lading Number
 - Truck Number
 - License Number

2. Driver Identification with photo

Upon arrival drivers will present the above information for verification by City of Sacramento Water Treatment Plant personnel.

SALES TAX

Sales tax is not applicable as this product is used in the production and purification of potable water for resale, California Resale Permit Number SYKH98-021076.

SAFETY PROCEDURES & PROGRAM

Bidders shall supply copies of their safety procedures and/or programs as part of the bid package. All services and merchandise must comply with current California State Division of Industrial Safety Orders and Cal O.S.H.A.

TEST FOR INSOLUBLE MATERIAL

Transfer 100g of the gross sample to a porcelain casserole of 600-800 ml capacity (measuring 5.5" in diameter and 3" in depth), which contains 400 ml of tapwater. Add the lime gradually, with continual stirring, and avoiding spattering. Stirring should not be vigorous enough to pulverize brittle material. The relatively gentle action of a magnetic stirrer operated at low speed has been found to produce excessive fines. Stirring throughout the procedure should be manual and minimal. Stir until there are no lumps and a smooth paste is formed. Add tap water to the casserole to within a 1/2" of the top. Stir, allow to settle for 10 seconds, and carefully decant about half of the suspension. Repeat this operation of washing and decanting until the residue can be seen in the bottom of the casserole. When the last water has been decanted, add 250 ml of 10% muriatic acid, loosening any deposits on the walls of the casserole with the aid of a stirring rod. Carefully decant most of the acid solution, being certain not to lose any of the residue. Add sufficient muriatic acid to insure a minimum of 10% excess, and allow to stand for 30 minutes. Material which has not dissolved may be regarded as insoluble. Decant the acid solution, wash twice with tap water, and once with distilled water. Dry the residue and, making necessary transfers with the aid of a camel's hair brush, weigh to the nearest milligram.

The test for available calcium oxide shall be in accordance with Section 5.3 of AWWA B202-93 and Addendum B202a-97. The precision of the determination will depend in part on the state of subdivision of the insoluble material. The precision of the determination is about 10%. This determination is most conveniently performed on the part resulting from the slaking test.

EXHIBIT B

SUPPLIES 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 (hereafter the "Services"), shall not exceed the total sum of \$ 337,000.00 .
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services at a rate of \$258.00/ton through the contract term.
3. **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. 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
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - C. 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:

*Department of Utilities
1395 35th Avenue, Sacramento, CA 95822
Phone (916) 808-6849
Attn: Diane Naranjo*

- 4. 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 contract supplement authorizing such Additional Services is approved by CITY in accordance with CITY's approval procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 5. 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, 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.
- 6. 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 6.

EXHIBIT C

SUPPLIES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

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

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

EXHIBIT D

SUPPLIES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

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

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

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

with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

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

such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. Term; Suspension; Termination.

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

10. Indemnity.

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

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

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

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

- A. Minimum Scope & Limits of Insurance Coverage
- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by

CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

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

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

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

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

Workers’ Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

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

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

B. Additional Insured Coverage

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

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

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

City of Sacramento
c/o Ebix RCS

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

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

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

F. Subcontractors

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

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

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

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

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

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

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

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

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

DEFINITIONS

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

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

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of

espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

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

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

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

Attachment A



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

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

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

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

The included employee benefits are:

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

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

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

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
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- 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
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- 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.