

PROJECT #:  
PROJECT NAME: Docks Area Riverfront Promenade/Parkway  
DEPARTMENT: Economic Development  
DIVISION: Downtown

CITY OF SACRAMENTO

### CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

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

*Walker Macy*  
*111 SW Oak, Suite 200*  
*Portland, Oregon 97204*  
*503-228-3122 (phone) 503-273-8878 (fax)*

("CONSULTANT"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to CITY the services described in Exhibit A. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit A. CONSULTANT shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONSULTANT notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONSULTANT 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 Municipal Code.
2. **Payment.** CITY shall pay CONSULTANT 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 CONSULTANT for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONSULTANT 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 CONSULTANT uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 Municipal Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento Municipal Code Chapter 3.54 are summarized in Exhibit E. CONSULTANT 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 CONSULTANT hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONSULTANT and to bind CONSULTANT 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

**CONSULTANT:**

Walker Macy

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

93-0733883  
Federal I.D. No.

Print name: \_\_\_\_\_

641001819  
State I.D. No.

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

For: Ray Kerridge, City Manager

Pending  
City of Sacramento Business Op. Tax Cert. No.

APPROVED TO AS FORM:

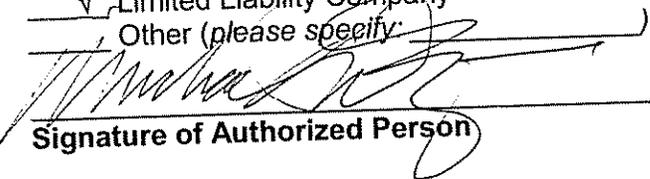
TYPE OF BUSINESS ENTITY (check one):

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

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

ATTEST:

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

  
Signature of Authorized Person

Attachments

\_\_\_\_\_  
Michael W. Zilis, Principal

- 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

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Consultant: Walker Macy

Address: 111 SW Oak, Suite 200, Portland, Oregon 97204

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

1. Consultant 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, Consultant 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 Municipal Code (the "Ordinance").
3. Consultant 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

Consultant agrees that if Consultant offers any of the above-listed employee benefits, Consultant 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. Consultant understands that Consultant 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, Consultant will not be required to provide the benefit, nor shall it be deemed discriminatory, if Consultant requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
  - b. If Consultant is unable to provide a certain benefit, despite taking reasonable measures to do so, if Consultant provides the employee with a cash equivalent Consultant will not be deemed to be discriminating in the application of that benefit.
  - c. If Consultant provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If Consultant provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

- e. If Consultant 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"). Consultant 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. Consultant 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 Consultant 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 Consultant cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Consultant provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Consultant 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. Consultant understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Consultant 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. Consultant 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. Consultant further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Consultant also agrees to prominently display a poster informing each employee of these rights.
  7. Consultant understands that Consultant 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. Consultant 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 Consultant.

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 Consultant to the provisions of this Declaration.



Signature of Authorized Representative

8.15.06  
Date

MICHAEL W. ZILIS  
Print Name

PRINCIPAL  
Title

**EXHIBIT A**  
**CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**  
**SCOPE OF SERVICES**

**1. Representatives.**

The CITY Representative for this Agreement is:

**Laura Sainz**  
**City of Sacramento - Economic Development Department**  
**1030 – 15<sup>th</sup> Street, Suite 250, Sacramento, CA 95814**  
**Phone: (916) 808-2677 / Fax: (916) 808-8161**  
**Lsainz@cityofsacramento.org**

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

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The CONSULTANT Representative for this Agreement is:

*Michael Zilis*  
*Walker Macy*  
*111 SW Oak, Suite 200*  
*Portland, Oregon 97204*

All CITY questions pertaining to this Agreement shall be referred to the CONSULTANT Representative. All correspondence to CONSULTANT 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. Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is √ is required for this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

**3. Scope of Services.**

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

**4. 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.

WALKER·MACY  
*Landscape Architecture Urban Design Planning*

August 16, 2005

Laura Sainz  
Economic Development Department  
1030 15<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

Re: THE DOCKS RIVERFRONT PROMENADE  
WORK PLAN – CONTRACT A  
Attachment 1 to Exhibit A: The services provided shall be set forth in Attachment 1 to  
Exhibit A, attached hereto and incorporated herein.

Dear Laura,

We have spent the past several weeks working with our team members to refine their scope of work and to eliminate duplicative efforts. Attached is the scope of services for The Docks Riverfront Promenade Project. In it you will find the following subjects: Project Team, Project Understanding, Project Assumptions, Tasks, and Cost of Design Services. We understand that the Work Plan will be used as Exhibit A of the Contract for Services.

As you have requested, we have noted tasks to be billed separately under Contract B. The work will be completed with the sequence as noted in Contract A.

This scope reflects comments received from you and from our consulting team members. We are all eagerly awaiting approval to commence on this challenging project and pledge our best efforts to ensure that The Docks Riverfront Promenade, when completed, will exceed City expectations.

Regards,  
Walker Macy

Michael W. Zilis  
Principal

Jarvis Payne  
Senior Project Manager

J. Douglas Macy • Michael W. Zilis

111 SW Oak, Suite 200 Portland, OR 97204  
Phone 503-228-3122 Fax 503-273-8878

Contract of Services – Exhibit A  
The Docks Riverfront Promenade  
WORK PLAN – CONTRACT A  
August 16, 2005

## **THE DOCKS AREA RIVERFRONT PROMENADE**

### PROJECT TEAM

Walker Macy	Prime Consultant Landscape Architect
Nichols Consulting	Civil Engineering Engineering Management Contaminated Site Issues Cost Estimating
Jones & Stokes	Permitting Environmental Design Hydraulic Modeling
Ned Kahn	Arts Planning
Luma/PAE	Lighting Design Electrical Engineering
SAGE	Geotechnical Engineering Structural Engineering
Rail Pros	Railway & Crossing Design PUC Coordination
SMWM	Architecture (If architectural services are required, SMWM can be added to the team as an additional service)

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### CITY-PROVIDED SERVICES

Michael Dequine & Assoc.	Site Survey Legal Descriptions
Gail Ervin	Historic Analysis CEQA / NEPA
TBD	Cost Estimating

## PROJECT UNDERSTANDING

The Docks Area Riverfront Promenade adjacent to Downtown Sacramento is defined on the north by O Street, on the east by the excursion train rail lines and associated levee crown, on the south by entrance of Miller Park at Broadway Street and on the west by the Sacramento River. The ¼ mile long project site currently includes the vertical wall, levee, rail line for an excursion train and an asphalt bicycle path. South of Pioneer Bridge, and west of the levee, the project site includes a 2.88 acre lowland park site. Access to downtown includes a vehicular and pedestrian access at O Street, the future pedestrian/bicycle R Street trestle connection and Broadway St. See Exhibit B for the project area map.

The project will extend the exiting promenade from the Circle of Lights at the north to Miller Park to the south. The new development will enhance public access and interaction with the river. Improvements will include a paved promenade sized to accommodate pedestrians, bicycle riders, and emergency vehicles. Amenities will include seating, lighting, overlooks, planting, and site furnishings. Safe and aesthetically pleasing interface with the existing rail will be established. Key to the area's success will be the interface with planned mixed use development immediately east of the planned promenade. Work will include collaboration with the adjacent development's design team. The promenade will accommodate future development of a pedestrian bridge at R St, vehicular bridge at Broadway, and waterside docks and piers. The area adjacent to Miller Park will be designed to integrate the park entrance and the Docks promenade development.

## PROJECT ASSUMPTIONS

1. Walker Macy (WM) will be the prime consultant responsible for the overall conduct of the project. Nichols (NCE) will be a sub consultant to Walker Macy and be responsible for civil engineering and management of railroad engineering, geotechnical engineering, structural engineering, and cost estimating services.
2. The City desires seamless services from receipt of notice to proceed through completion of construction administration and project closeout. We assume a project completion date of March, 2009.
3. For purposes of evaluating the amount of professional services required, we have assumed a project construction budget of \$25,000,000 for hard costs.
4. We have assumed that the work tasks will be provided for a single phase construction documentation package.
5. To minimize survey coordination issues, we assume the City will continue to contract with Michael Dequine & Associates to provide augmented survey services, to develop legal descriptions, and to provide miscellaneous survey services. The consultant team will rely on the accuracy of the survey work provided by the City's surveyor.

Contract of Services – Exhibit A  
The Docks Riverfront Promenade  
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6. Field review of existing utilities for the project site north of Pioneer Bridge has been completed, and this information will be made available to the project team.
7. Fountain mechanical and electrical services are not provided within the base scope of work. If it is determined during schematic design that a fountain is desired for this project, we have included a separate fee to document fountain mechanical and electrical construction documentation.
8. The City staff will obtain permission from property owners as necessary for access to subsurface exploration areas at least 10 days in advance of scheduled drilling.
9. Subsurface investigation work will be limited to 2 soil borings behind the existing wall, and 9 exploratory borings located within the Promenade alignment ranging from 20 to 80 feet deep.
10. We assume that the existing levee is structurally sound and has sufficient strength to support the riverfront promenade improvements. ~~Levee strengthening and or bank protection, if required, is limited to minor modifications.~~
11. This scope of work assumes that the recommendations for the existing River wall within the 1A and 1B reach as outlined in the November 1988 Stability Evaluation River wall Report do not require modification. Our team will notify the City if we find that current levee or wall conditions have significantly changed since the issuance of the 1988 report based only on our visual evaluation of the wall. This scope of work does not include any testing of the wall or stability analysis to confirm the results or findings of the 1988 report. Should the City wish to update the 1988 report, this would be accomplished under separate authorization. The scope of work does not include replacement of the wall. Design of a complete replacement wall if required will be an additional service.
12. One construction cost estimate will be prepared by the consulting team at the completion of the schematic design phase. Two construction cost estimates will be prepared during construction documents preparation; one at 60% completion, and one at 95% completion. These estimates will include all construction elements expected to be included in a project bid document. These estimates will not include related project costs such as land acquisition, hazardous material containment or abatement, and project "soft costs"; (e.g., design fees, permit charges, utility connection charges, and systems development charges).
13. The City may retain a cost estimating service to independently estimate project costs at schematic and construction document levels of completion. Differences between the consulting team's estimates and the City's estimates will be discussed at meetings with the City during the course of the project.
14. We assume that compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) will be required and has been or will be completed simultaneously with the permitting process and is the responsibility of the City.

Contract of Services – Exhibit A  
The Docks Riverfront Promenade  
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15. We understand that the EIR to be completed by the City for the project includes a project-level analysis of the proposed promenade project. The EIR needs to explain the impact to resources affected, determine significance, and propose any mitigation due to the need for rock protection on the waterside of the levee.
16. We understand that an Environmental Impact Report (EIR) will be needed rather than a Mitigated Negative Declaration (MND), and that the EIR is not included in this scope of work.
17. We understand that Phase 2 environmental sampling is not included in this scope of work.
18. We assume that there are no archeological resources in the study area. If archeological resources are discovered, it is understood that additional studies may be required, the project timeline may need to be adjusted, and project designs may need to be altered.
19. We will prepare specifications using Cal Trans for Federal projects format as provided. Drawings will be prepared using AutoCAD 2005 with English measurements. Drawings will be typical of those used in other parks and open-space work and as per the Walker Macy example provided to Laura Sainz.
20. Design of in-water structures (e.g., docks, piers) will be carried through the completion of the schematic design phase to allow for development of reasonable cost estimates. Work beyond the schematic design phase for in-water structures is not included in the project.
21. The City will conduct a process with the State Reclamation Board to promote timely and reasonable responses to allow for locating the required theoretical levee and determining the crown elevation early enough that design progress is not impeded. The consulting team has included an allowance to assist in meeting Reclamation Board requirements in task 6.9. Specific permit preparation tasks are described separately in Task number 6.4.
22. If architectural design services are needed, they will be provided through the consulting team as an additional service. To maximize efficiency, we propose to use SMWM Architects, who are already involved as the KSWM Docks Partners architect, to provide architectural services.
23. The owner of the rail lines will be amenable to a possible alignment shift of the rail lines within the project site.
24. In anticipation of a potential need for rail line realignment, this scope of work assumes a realignment no greater than 30 ft. in either easterly or westerly direction. Any need for rail alignment in excess of 30 ft. is in excess of this scope of work.
25. We have assumed that the promenade will be designed not to touch the pioneer Bridge and therefore structural analyses of the bridge will not be required. We will review available bridge as-built plans to assess locations of footings and other below grade elements.

Contract of Services – Exhibit A  
The Docks Riverfront Promenade  
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26. CPUC will approve crossing plans similar in number and arrangement to those shown in the current master plan for the project. Additional permit coordination, modifications, additions etc. will require a scope and fee change.
27. City responsibilities:
  - a. Provide complete survey and legal description services via Michael Dequine & Associates including riverbank and river bathymetric.
  - b. Provide all historic information necessary for the project.
  - c. Provide Phase 1 and Phase 2 environmental studies for all relevant parcels north of the Pioneer Bridge.
  - d. Establish and coordinate with Technical Advisory Committee.
  - e. Provide all EIR and CEQA permitting services.
  - f. Provide separate cost estimates at the schematic and construction document levels to compare with the design team's estimates.
  - g. Provide CalTrans Division 0/Division 1 Sections of the Project Specifications. The consulting team will provide technical specifications to the City for inclusion in the specifications document.
  - h. Reproduction and distribution of bid documents.
  - i. During the construction phase, the City will provide a construction manager to observe the work of the contractor and to arrange meetings, prepare and issue agendas and prepare and distribute construction meeting notes.
  - j. Provide public process support including: website development and maintenance; logistics for locating and setting up meeting rooms; creating and issuing fliers, handouts and notices; attendance at public meetings; and conduct all media relations for project-related information and news.
  - k. Providing parcel ownership map.
  - l. Provide a project coordinator who will be consistently available to assist the consulting team throughout the length of the project.
  - m. Obtain permission from property owners as necessary to allow access for subsurface exploration.
  - n. Negotiate with the owner of the rail lines, if necessary, to allow realignment of the tracks and to allow pedestrian access across the tracks where appropriate.
  - o. Negotiate with Caltrans as necessary to allow the promenade development within the Pioneer Bridge right- of way.

### **Task One: Project Management**

- 1.1 **Coordinate Team Efforts and Schedule**  
Provide coordination of the team, deliverables, and schedule for the duration of the project.
- 1.2 **Develop client/team contact information - Portions of this task will be billed under Contract B**  
Prepare and update as required, client/team contact information including applicable government agencies.
- 1.3 **Prepare Monthly Progress and Expenditure Reports - Portions of this task will be billed under Contract B**

At the beginning of every month, a work progress report will be provided describing the work completed in the preceding month by task and the expenditure of fees by percentage complete and actual reimbursable expenses. Monthly meetings will be conducted with the City to discuss work to date, key issues to be resolved, on-going and future tasks, and coordination items. Meeting minutes noting action items will be developed and distributed.

**1.4 Develop standardized document formats with City staff**

With input and approval from City staff, document formats will be standardized for the consultant team, and preferred methods for dissemination of information will be established.

**1.5 Deliverables**

- Project schedule and updates
- Monthly progress reports and invoicing
- Client/team contact list
- Approved sample document formats
- Meeting notes

**1.6 Meeting Attendance**

- Kick off meeting with City
  - Kick off meeting with consultant team
- 

**TASK TWO: OBTAIN AND REVIEW EXISTING TECHNICAL DATA**

**2.1 Obtain and Analyze Existing Surveys**

Obtain and review the City supplied survey. The survey will include all topography, constructed elements, utilities, property ownership, easements, and significant vegetation identified by location, DBH, and species. The survey area will include the project site, the adjoining mixed use development site and the river's bathometric survey.

**2.2 Identify Additional Required Survey Information**

The team will review of the survey and identify additional information if necessary. The City's surveyor will provide the additional information on a timely basis.

**2.3 Review Land Use Regulations with City**

Review with the City easements, zoning regulations, and other information pertinent to the project's development.

**2.4 Identify Required Permits with City/Gail Ervin**

Review the existing permit listing provided by the City and verify its completeness.

**2.5 Obtain Railroad Design Requirements**

**2.6 Identify Levee Design Requirements**

Meet with the Rec Board staff to discuss requirements of development on the levee.  
(See Task 6.9)

**2.7 Obtain and Review Existing Geotechnical & Contamination Studies**

Obtain available site geotechnical assessments from the city, property owners and other public agencies. The City will provide Phase 1 and Phase 2 environmental studies for parcels north of the Pioneer Bridge.

**2.8 Obtain and Review Hydraulic Analysis**

Obtain studies and reports from SAFCA and their consultants related to the river conditions and flood analysis

**2.9 Review Environmental Assessment Reports**

- 2.10 **Review Cultural & Archeological Studies provided by the City**
- 2.11 **Develop Base Maps**
- 2.12 **Review KSWM Dock Partners Development Plans**
- 2.13 **Deliverables**
  - Additional survey requirement request
  - Summary of identified issues
  - Summary of permit requirements noting key issues and probable time lines
  - AutoCAD 2005 Base Map
- 2.14 **Meeting Attendance**
  - Meeting with TAC (1 meeting)
  - Meeting with City Staff (2 meetings)
  - Meeting with Consultant Team (2 meetings)
  - Meeting with KSWM (1 meeting)

### **TASK THREE: DATA GATHERING AND FIELD INVESTIGATION**

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#### **3.1 Conduct Structural Review of Existing Structures**

We proposed to evaluate the existing structures along or adjacent to the promenade alignment based on visual observation and information available in existing reports and design new promenade structures proposed by the team. The extent of the existing structure evaluation will be dependent on where and how the proposed structures will interface with the existing structures. We expect that the river wall will need to accept loading from the promenade walkway and railings as a minimum. In addition, the river wall may be required to support cantilever sections of the promenade. Accordingly, we expect that the following tasks will be required:

- **Document Review**  
Review the report(s) on the existing river wall along the levee and evaluate the impact of the river wall on the proposed new section of the promenade. Review additional structural documents and reports as available that pertain to the proposed promenade improvements.
- **Visual Assessment**  
Visually assess the condition of the existing structures along the levee, including the river wall with respect to any information on the structures that have been provided to us. We will attempt to determine if the existing reports or other data are still applicable to the structures and what, if any, additional investigation is needed. Summarize our assessment in a written report.
- **Existing Pioneer Reservoir**  
Current concept drawings indicate that the inboard levee fill may extend over the top of the existing Pioneer Reservoir. Coordinate services with other consultants that are currently working on the reservoir. However, a detailed structural evaluation of reservoir is not anticipated at this time.

#### **3.2 Coordination with Utility Companies and Field Locates**

##### **Utility A Letters and Plans**

Letters and plans (Base Map) will be sent to the applicable utility companies for requesting utility information and verification of their existing facilities including the location, size, and depth (if applicable) within the work area, or those that might be affected by the proposed improvements.

**Utility B Letters and Plans**

Update the base map to reflect the existing utility information. Once the draft plans are completed, send the B letters and plans to the applicable utility companies notifying the utility companies of conflicts between existing facilities and the proposed improvements. The utility companies will also be asked to verify their existing facilities including the location, size, and depth (if applicable) within the work area.

**Utility C Letters and Plans**

If there are utility conflicts, send the C letters and plans to the applicable utility companies to coordinate the utility relocation. It is assumed that the franchised utility companies will design the relocation of their utilities. The C letters, distributed when the project is ready for advertisement, will include the project schedule and deadlines for completion of the utility relocation.

- 3.3 **Conduct a detailed Review of Existing Utilities with Utility Representative**  
Conduct field visits of existing utilities south of Pioneer Bridge with Utility Companies to review existing conditions and potential modifications. Participants of the field review include the core design team, City staff, key stakeholders, and representatives of the various utility agencies.

- 3.4 **Conduct a detailed review of Environmental conditions for all parcels relevant to promenade and open space**  
Conduct historical research to evaluate the site for evidence of potential soil and groundwater contamination resulting from current and/or former site activities. Utilize the existing Phase 1 and 2 information provided from the City for parcels north of the Pioneer Bridge. Given the on-going remediation activities on some of the parcels, the team will rely on information provided by those conducting the work. Conduct a reconnaissance level evaluation of the other properties for visual evidence of surface contamination and potential subsurface sources of contamination. Review Federal, State and County regulatory agency lists indicating known instances of site contamination. Prepare a detailed report of the findings.

- 3.5 **Conduct Geotechnical Investigation**  
The purpose of our geotechnical services will be to evaluate subsurface conditions and geotechnical design criteria for the proposed promenade. We will provide on-site evaluation including drilling 11 borings to a depth of 20 to 80 feet below grade. Soil samples will be collected and tested in a laboratory. Following the lab work, engineering analysis will be prepared covering foundation issues associated with pavement design, small structures, allowable slope inclination, etc. Based on the results of the exploratory borings and laboratory testing, we will perform appropriate geotechnical analyses to develop conclusions and recommendations for the following:

- Subsurface conditions
- Site preparation and grading, including fill and backfill compaction criteria
- Permanent and temporary cut slopes
- Temporary earth retaining walls and Mechanically Stabilized Embankment (MSE) walls for inboard edge of new levee.
- Shallow foundation design criteria, including allowable bearing pressures
- Total and differential settlements due to structures and aerial fills, including surcharging to reduce settlement, if required
- Lateral earth pressures and resistance to lateral loads
- Feasible alternative retention and/or shoring systems including geotechnical design criteria
- Groundwater conditions and construction dewatering

- Seismic design parameters based on the 2001 CBC
- Pavement Design
- Analysis will be described and summarized in a written report.
- Boring locations will be surveyed and added to the site survey by the City's surveyor.

**3.6 Develop Parcel Ownership Map**

Based on information provided by the City's surveyor, an ownership map will be produced.

**3.7 Deliverables**

- Geotechnical investigation report
- Structural investigation report
- Annotated utility routing map
- Contamination investigation report
- Parcel Ownership map
- Phase I environmental report to supplement existing Phase I/II report for the Docks project.
- Meeting notes
- Monthly progress reports

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**3.8 Meeting Attendance**

- Field sessions with utility representatives (4 meetings)

**TASK FOUR: PRELIMINARY PROMENADE DESIGN**

**4.1 Review Previous Design Studies and Identify Opportunities and Constraints**

Obtain and review past and current planning studies and reports.  
Identify opportunities and constraints for promenade development

**4.2 Meet with City Staff**

Discuss site conditions and opportunities and constraints for promenade development City staff.

**4.3 Meet with KSWM**

Discuss KSWM plans to date, public/private interface, and opportunities/constraints

**4.4 Develop 2 to 3 Preliminary Design Options – Portions of this task will be billed under contract B**

Based on findings and input from the City, property owners, and public agencies, establish conceptual plans for the promenade. Develop 2 to 3 options that present different approaches towards meeting the goals, opportunities, and constraints of the site.

**4.5 Develop Structural Designs for Promenade Improvements**

- **Existing Retaining Wall**  
Where the space between Front Street and the existing levee retaining wall narrows, and where overlooks are required, it is likely that the promenade will be cantilevered over the existing wall to provide extra promenade width. If the wall cannot adequately accept the cantilever loads, pile foundations may be required on the water side of the retaining wall, or the wall will need to be retrofitted or replaced. Given that the existing non-cantilevered sections of promenade are supported solely by the retaining wall, we expect that we will be able to do the same for the new non-cantilevered promenade sections.
- **Replacing or Retrofitting the Existing Wall per November 1988 Report**  
We rely on the accuracy of the 1988 River wall Stability Evaluation Report for any replacement or retrofitting of the existing river wall. Will develop one design case for replacement of the wall along Reach 1A using a cast-in-place concrete wall on spread

foundation, and one design case for wall retrofit along Reach 1B using tie-backs and vertical dowels as recommended in the 1988 River wall Stability Evaluation Report.

- **Promenade Walkway and Overlooks**  
Structural design for on-grade and cantilevered concrete slabs, vehicular slabs, and detailing for street light standards, shade structures, and railings. At some locations along the promenade it will also be desirable to construct river access points. These locations may require that stairways and/or ramps extend down a certain distance down from the crest of the levee.

- **Future Pier Connections**  
Given that the final design of the piers is not part of this project, only flexible future gangway connections to the promenade such that specialized foundations or anchoring systems are not needed at this time. Future piers will have their own separate anchorage and foundation systems.

- **Land Side Retaining Walls**  
Due to the earlier timing of the promenade project with respect to the overall timing of the Docks project, it is likely that levee widening would encroach upon existing reservoir or sewage treatment plant structures before decisions are made as to their disposition. Therefore, either permanent or temporary earth retaining walls are anticipated to support the inboard edge of the new levee fills until the remainder of the Docks project fill can be placed, or until new buildings are built that can support the fill. In some cases, future lower story parking structures for some of the proposed high-rise buildings would benefit by these walls being in place. If information on the proposed new buildings is available by the time the promenade project design begins, the team will be able to coordinate the design of the walls with the proposed buildings.

#### 4.6 **Develop Conceptual Design for Toe Rock Protection**

Provide schematic toe rock protection design for the new riverbank based on similar experience along the Sacramento and American Rivers and input from a fisheries biologist. Provide options for the vegetative treatments and habitat restoration or enhancement. This task includes consideration for recreational safety, public access, mitigation, and riparian and open water habitat enhancement. It is assumed that the EIR completed by the City for the project includes assessment for impacts related to toe protection of the riverbank.

#### 4.7 **Develop Interpretive Plan (Optional Service)**

**Note: This item is provided as an optional task to the base contract.**

Using existing interpretive materials provided by the City, options for display and presentation of material will be explored. This scope assumes that no new text or interpretive content will be developed for interpretive displays. This task includes internal coordination between the City's historian and other project team members to ensure consistency with the other design features and objectives.

#### 4.8 **Presentations and Discussions**

Present preliminary design options to the following:

- City staff
- KSWM and Friends of the Sacramento River
- Technical Advisory Committee
- Park and Recreation Commission
- Bike Advocacy Groups
- Disability Commission

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Meetings will be scheduled consecutively when possible for efficient travel and expenditure of funds.

- 4.9 Conduct Public Workshop One – Portions of this task will be billed under Contract B**  
▪ Present and discuss analysis and design options to public during an evening meeting.
- 4.10 Public Outreach Program Assistance – Portions of this task will be billed under Contract B**  
▪ Provide updated materials to City staff every six weeks and whenever a major task has been completed, for inclusion into City maintained web site.
- 4.11 Meet with City Staff to Select Preferred Option**  
Receive input from City staff regarding the preferred option or combinations of options.
- 4.12 Refine Preferred Option**  
Based on input received, the team will refine the preferred option. Refinements will include studies of pavements, lighting, furnishings, planting, overlooks and future docks and piers.
- 4.13 Presentations and Discussions**  
Present the refined plan to the following:  
▪ City Staff  
▪ KSWM and Friends of the Sacramento River  
▪ Technical Advisory Committee
- 4.14 Public Workshop Two – Portions of this task will be billed under Contract B**  
▪ Present the refined plan to the public during an evening meeting. Receive input for incorporation into Schematic Plans.
- 4.15 Meet with City Staff for Approval to Prepare Schematic Design**  
Receive authorization from City staff to develop approved design to a schematic completion level.
- 4.16 Prepare Schematic Design (SD) Level Drawings**  
▪ Layout Plan  
▪ Materials Plan  
▪ Grading/Drainage Plan  
▪ Levee Locations and Features Plan  
▪ Railroad Modification Plan  
▪ Utilities Plan  
▪ Lighting Concept Plan  
▪ Planting Concept Plan  
▪ Construction Details  
▪ Interpretive Plan  
▪ Arts Plan
- 4.17 Prepare SD Level Cost Estimate**  
Prepare a cost estimate that includes all of the physical items to be constructed. The piers and docks will be estimated in lump sum line item format.
- 4.18 Provide SD documents to City for Review**  
Provide SD drawings and cost estimate to City for review and comment.
- 4.19 Meet with City Staff**  
Meet with City Staff to discuss review comments and to reconcile the design team's and City's cost estimate.
- 4.20 Deliverables**  
▪ 2 to 3 Preliminary Design options

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- Outline of outreach program with proposed timeline
  - Material for City maintained web site
  - Refined preferred option
  - Schematic Design level drawing set
  - Schematic Design level cost estimate
  - Meeting notes
  - Monthly progress reports
- 4.21 Meeting Attendance**
- Meeting with City Staff (5 meetings)
  - Meeting with KSWM (3 meetings)
  - Meeting with TAC (2 meetings)
  - Meeting with Park and Recreation Commission (1 meeting)
  - Meeting with Bike Group (1 meeting)
  - Meeting with Disability Commission (1 meeting)
  - Meeting with Stakeholders (1 meeting)
- 
- Public Workshops (2 meetings)

**TASK FIVE: DEVELOP PUBLIC ARTS PROGRAM**

- 5.1 Review City provided Historic Information**
- 5.2 Review Metro Arts Commission Policies**
- 5.3 Meet with Metro Arts Commission**  
Review the existing Art Programs and discuss approaches with representatives from the Metro Arts Commission.
- 5.4 Develop Draft Conceptual Public Art Program**  
Establish a plan that anticipates areas and approaches to public art along the promenade. The intent is to establish a variety of opportunities for future artists to establish site-specific works of art that support and enhance the promenade design concept.
- 5.5 Meeting with City Staff**  
Present conceptual Arts program for discussion.
- 5.6 Meet with Metro Arts Commission**  
Review and discuss draft Conceptual Public Arts program.
- 5.7 Prepare Final Public Art Program**  
Based on input received, finalize Public Arts Program.
- 5.8 Deliverables**
- Draft Public Art Program
  - Final Public Art Program
  - Meeting Notes
  - Monthly Progress Reports
- 5.9 Meeting Attendance**
- Meeting with Metro Arts Commission (2 meetings)
  - Meeting with City Staff (1 meeting)

## **TASK SIX: PERMITTING SERVICES**

The environmental permitting scope is intended to provide sufficient coverage to satisfy the necessary environmental permitting needs in an efficient and cost effective manner. The environmental scope was developed based on the assumption that compliance with CEQA has been addressed or will be addressed simultaneously, and that the City of Sacramento will not be required to comply with NEPA.

The basis for assuming that a NEPA document will not be required stems from our understanding of the role that federal agencies are likely to play in the process. We understand that federal funding will not be used and that necessary permits from federal agencies will make use of existing programmatic agreements and consultations or their own NEPA decision documents and will not trigger the need for separate NEPA documentation (e.g. Environmental Impact Statement, Environmental Assessment) or that the permitting agency will prepare its own NEPA decision document. In addition, this scope assumes that the Alternatives Analysis, to be conducted as part of the Permitting Task (Compliance with Section 404, 401 or the Clean Water Act, Section 10 of the Rivers and Harbors Act), will provide a substantial amount of the information necessary for the Corps to prepare its own NEPA decision document.

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### **6.1 Permitting Scope Development**

- The purpose of this task is to rapidly assess design feasibility and constraints, identify study issues, refine the project description and project alternatives (to develop the Alternatives Analysis to comply with Section 404(b)(1) guidelines), and determine the lead agency for federal regulatory processes. This task will help the City acquire, at the earliest time possible in the permitting process, information crucial for confirming preliminary design concepts and the procedures to obtain critical-path federal agency approvals or permits. This task assumes that the project description developed for CEQA compliance contains accurate and sufficient information relative to project details necessary for the permitting process.

#### **Deliverables**

- Permitting Scoping Document

### **6.2 Environmental Permitting Assistance**

- Assist City staff in defining the procedures necessary to obtain critical-path state and federal agency approvals or permits for implementation of the Promenade project. Assist the City in preparing permit applications and submitting permit application materials. Consult informally with the Corps, USFWS, and NOAA Fisheries to determine federal lead agency status and attendant consultation processes under applicable federal resource statutes. This effort will build on our substantial involvement in similar efforts as a part of our ongoing work with the Sacramento River Corridor Planning Forum and the West Sacramento Riverfront Promenade. Using feedback from the agencies, data collected from field visits, reference materials, and input from City staff, identify and provide the City with a list of the environmental documents required for permit processing and approvals and schedules of application submittal and processing. The following have been identified for required permits/compliance needs:
  - Federal Endangered Species Act (under the U.S. Fish and Wildlife Service and NOAA Fisheries)
  - Encroachment permit
  - State Reclamation Board

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- Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (under the U.S. Army Corps of Engineers) Individual Permit
- Section 401 of the Clean Water Act (under the Regional Water Quality Control Board) Water Quality Certification
- Section 106 of the National Historic Preservation Act (State Office of Historic Preservation)
- City of Sacramento Tree Removal Permit
- Land Lease Permit (by the State Lands Commission)
- We will recommend approaches to completing and submitting permit application materials. For each of the required permit processes, Jones & Stokes will provide the following deliverables.

**Deliverables**

- Three hard copies of administrative draft application packages, along with supporting documents, will be submitted to the City for review and comment.
- Two bound hard copies, one camera-ready hard copy, and electronic version of all final application packages, along with supporting documents, will be submitted to the City for formal submittal to the appropriate regulating agencies.

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The specific subtasks necessary to complete the permit applications and associated documents are described below.

**6.3 Compliance with the Federal Endangered Species Act**

We expect that two separate Biological Assessments (BAs) will be required to comply with Section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S. Government Code 1536). Furthermore, the approach is based on the assumption that a 404 permit will be required, therefore providing the federal nexus for Section 7 rather than Section 10.

▪ **Coordinate with USFWS & NOAA Fisheries**

In coordination with the City, conduct two site visits with USFWS and NOAA Fisheries to the project site to provide an overview of the project in the field and the potential effects on federally listed species.

Summarize discussions from each site visit in e-mails to the USFWS and NOAA Fisheries, focusing on the respective agencies' concurrence with the team's assessment of direct and indirect effects, mitigation requirements for direct and indirect effects, and next steps to keep the process of obtaining a permit moving forward.

▪ **Prepare Biological Assessments (BAs) (Optional Service)**

**Note: This item is provided as an optional task to the base contract.**

Prepare two separate BAs, which would fulfill the Corps' Section 7 consultation requirements with the USFWS and NOAA Fisheries, would address the project's potential effects on federally listed species and ensure that the project would not jeopardize the continued existence of the listed species. USFWS and NOAA Fisheries would issue a Biological Opinion on whether jeopardy would occur, thereby triggering NEPA compliance by the Corps.

**Deliverables:**

- Two 4-hour site visits.
- Two follow-up e-mail notes to the USFWS and NOAA Fisheries with copy to the City.
- Three hard copies of administrative draft BA's will be submitted to the City for review and comment.

- Two bound hard copies, one camera-ready hard copy, and electronic version of the final BA's will be submitted to the City for formal submittal to the appropriate resource agencies.

#### 6.4 Reclamation Board Permit

- Prepare all of the necessary Reclamation Board encroachment permit applications and supporting documentation that the City will need to commence construction. This permit will require endorsements from USACE and the City of Sacramento Department of Utilities (acting as local maintaining agency). Conduct discussions collectively with the key State Reclamation Board staff members to flesh out all of the Boards concerns. Continued consultations with USACE and the Reclamation Board will be essential to gain timely approvals for proposed improvements. Provide assistance to the City in making presentations to the Reclamation Board, USACE, and any other stakeholder groups who may be affected by proposed improvements. Completion of the CEQA process is required before a permit may be issued. Note: The scope of work for the Reclamation Board permit process does not include exhaustive studies of design options for replacement or retrofit of existing river wall structures.

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#### Deliverables

- Up to six meetings with Reclamation Board staff and the City will be held to discuss the permit application, process, and issues.
- Three hard copies of administrative draft application package will be submitted to the City for review and comment.
- Two bound hard copies and electronic version of the final application package will be submitted to the City for formal submittal to the Reclamation Board.

#### 6.5 CWA Section 404 Individual Permit

- Under Section 404 of the CWA, a permit is required from USACE for the placement of dredged or fill material into waters of the United States, including wetlands. Projects may be authorized under existing general permits or may require an individual permit. An individual permit is assumed due to the public visibility of this project, as well as the possibility that waters are filled either due to placement of fill material on the landside of the levee, or due to features included on the waterside of the levee as part of the Promenade.
- **Prepare Individual Permit Application**  
Prepare an application for the City to submit to USACE to request an individual permit (IP) under CWA Section 404 for impacts affecting waters of the United States, including wetlands. The application package will include a completed application form, information regarding biological and cultural resources compliance conducted by the Federal lead agency, 404(b)(1) alternatives analysis, and a conceptual mitigation and monitoring plan. A pre-application meeting may be held with USACE to obtain guidance in addressing impact minimization and mitigation issues.
- **Develop Conceptual Mitigation and Monitoring Plan**  
If required, prepare a conceptual mitigation and monitoring design to illustrate the optimal mitigation strategy that includes project goals, success criteria, implementation plan and schedule, maintenance recommendations, and monitoring methods. Scope of Services does not include locating mitigation sites (if necessary).

Following the City's approval of the draft plan, finalize the conceptual mitigation and monitoring plan for the project. The mitigation and monitoring plan will incorporate

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requirements of USACE, USFWS, CDFG, NOAA-Fisheries, and the Regional Water Quality Control Board (RWQCB) ensuring that one plan satisfies both the Federal and State requirements and will be included in the IP application and other applications as needed.

- **Prepare Section 404(b)(1) Alternatives Analysis**  
Prepare an alternative analysis that meets EPA's Section 404(b)(1) guidelines, which state that only the least environmentally damaging practicable alternative may be permitted under CWA Section 404, taking into consideration cost, available technology, and logistics. As part of the required analysis, the team will evaluate offsite and onsite project alternatives, as appropriate. This task will also require close coordination with the City's environmental consultant preparing the EIR for this project to ensure consistency between the two reports.
- **Respond to Comments on the USACE Public Notice**  
Upon receipt of an IP application, USACE will publish a public notice for distribution to individuals, agencies, and organizations. Coordinating with the City, the team will prepare and submit to USACE a response to any comments received on the public notice. Consult with commenting agencies or individuals as necessary when responding to their concerns.
- **Attend Meetings**  
Coordinate with the USACE, EPA, USFWS, CDFG, NOAA-Fisheries, RWQCB, and the State Historic Preservation Officer as appropriate to keep the project review process on track. This scope includes attendance at up to six meetings to address the needs of the project team, resolve differences, and facilitate approval of the IP.

**Deliverables**

- Three hard copies of administrative draft application package, including a cover letter, application, alternatives analysis, graphics, a conceptual mitigation plan, and a draft public notice, will be submitted to the City for review and comment.
- Two bound hard copies, one camera-ready hard copy, and electronic version of the final application package will be submitted to the City for formal submittal to the USACE.
- Up to four meetings with the USACE, including the pre-application meeting, to discuss the project and permit requirements.
- Response to comments, including tracking and categorization as necessary.

**6.6 Certification for Section 401 of the Clean Water Act**

- **Prepare Application**  
CWA Section 401 requires that the discharge of dredged or fill material into waters of the United States, including wetlands, does not violate state water quality standards. As required by Section 404 of the CWA, water quality certification from Regional Water Quality Control Board (RWQCB) must be obtained for permit compliance. Compile the necessary information and submit a complete certification package to RWQCB. A certification fee to be provided by the City must be included in the package. Completion of the CEQA process is required before certification may be granted.

**Deliverables**

- Three hard copies of administrative draft application package will be submitted to the City for review and comment

- Two bound hard copies, one camera-ready hard copy, and electronic version of the final application package will be submitted to the City for formal submittal to the RWQCB.

**6.7 Compliance with Section 106 of the National Historic Preservation Act**

▪ **Submit Technical Report and Coordination**

It is our understanding that a technical report sufficient for consultation with the State Historic Preservation Office (SHPO) has been completed as part of the CEQA analysis conducted for the project. Jones & Stokes will submit the technical report to the USACE as part of the Section 404 permitting process to allow the USACE to initiate consultation with SHPO. Additionally, Jones & Stokes will consult with the SHPO staff and USACE staff to ensure timely receipt of concurrence with the technical report findings.

**Deliverables**

- Two bound hard copies, one camera-ready hard copy, and electronic version of the final application package will be submitted to the City for formal submittal to the USACE
  - Up to two meetings will be held with SHPO and/or USACE
- 

**6.8 Compliance with Section 1600 of the California Fish and Game Code**

▪ **Prepare Application for Streambed Alteration Agreement**

A streambed alteration agreement, in compliance with Section 1600 of the California Fish and Game Code, is required when projects will substantially divert, obstruct, or change the natural flow of a river, stream or lake; substantially change the bed, channel, or bank of a river, stream, or lake; or use material from a streambed. Jones & Stokes is assuming that a formal application package will be prepared, describing the project features; construction period; construction methods; impacts to vegetation, fish, and wildlife; and the proposed monitoring plan. The City of Sacramento will be required to pay an application fee to CDFG. Completion of the CEQA process is required before an agreement can be issued.

**Deliverables**

- Two bound hard copies, one camera-ready hard copy, and electronic version of the final application package will be submitted to the City for formal submittal to the DFG
- Up to two meetings will be held with SHPO and/or USACE

**6.9 Reclamation Board Process**

The team will be available to the City during the project to meet with and provide information to the Reclamation Board in order to position the project to receive approval. Tasks may include: meetings, phone conversations, attendance at hearings, and preparation of graphic materials, providing calculations, and correspondence. An allowance has been established for this task and the team will bill on a time and material basis against this allowance.

## **TASK SEVEN: MAINTENANCE RECOMMENDATIONS**

- 7.1 Meet with City Maintenance Staff**  
Determine preferred City maintenance procedures, staffing, and skill sets.
- 7.2 Develop Upland Maintenance Recommendations**  
Based on approved Schematic Design, techniques, equipment, and necessary staff to maintain hardscape and softscape elements of the project will be evaluated.
- 7.3 Develop Bank Stability Maintenance Recommendations**  
Based on the preferred riverbank stability technique, maintenance recommendations will be established.
- 7.5 Prepare Estimate of Annual Maintenance Costs**
- 7.6 Discuss Recommendations with City Maintenance Staff**
- 7.7 Deliverables**
- Maintenance Recommendations Report
  - Estimated Maintenance Costs
  - Meeting notes
  - Monthly progress reports
- 7.8 Meeting Attendance**
- Meeting with City Maintenance Staff (2 meetings)
- 

## **TASK EIGHT: CONSTRUCTION DOCUMENTS**

- 8.1 Meet with City Staff**  
Discuss the project's perimeters based on available funding and sequence of construction at adjoining parcels. Obtain approval to proceed into Construction Documentation.
- 8.2 Prepare 2D Hydraulic Analysis, As Required**  
**Note that this task item is optional, and the associated fee has been itemized in the fee chart.**  
To satisfy potential permit requirements, an updated two-dimensional (2-D) hydrodynamic model will be prepared for the project footprint and design. Analysis will include up to three project alternatives and provide recommendations for design improvements based on the analysis. The Sacramento Area Flood Control Agency (SAFCA) has conducted a preliminary hydraulic analysis of the Sacramento River Master Plan (SRMP) area using a one-dimensional model and determined that the proposed facilities that will be constructed in the floodway will have only an incremental effect on the local hydraulic capacity. The Sacramento River Corridor Planning Forum has developed guidelines that are designed to maintain or improve the overall hydraulic capacity of the River in the SRMP area. The guidelines recommend that additional detailed modeling of proposed facilities be conducted using a two-dimensional model during preliminary design. These evaluations are suggested for major facilities such as bridge piers, intake structures, large floating and anchored structures and changes to channel geometry. The project team proposes to develop a two-dimensional hydraulic model of Sacramento River that includes the river reach starting approximately 1,000 feet upstream from the beginning of the project limits and extends to about 1,000 feet downstream from the end of the project limits. Two models most used by the project team members include the RMA model developed by the Army Corps of Engineers and the MIKE21 model developed by the Danish Hydraulic Institute. Either

of these models could be used but we anticipate using RMA2 because it allows for varying grid sizes

The U.S. Army Corps of Engineers' (USACE) and/or the SAFCA will be contacted and we will obtain the one-dimensional hydraulic model of the river, including design water surface profiles for the existing flood control improvements. Topographic, hydraulic roughness, and other hydraulic data used in the USACE model will be extracted and used as the basis of input data for the two-dimensional model. The model will have a variable grid size to define the channel geometry, with a smaller grid size used near project features, which may possibly cause local areas of higher flow velocity and a two-dimensional flow pattern.

The initial model of the river that we will develop will reflect USACE's design geometric and hydraulic conditions. This model will be operated and the calculated water surface profile for the design flood will be compared to the profile calculated by USACE. Upstream and downstream bound conditions (outside of the project area) will be obtained from the USACE model. It is expected that the two-dimensional model's water surface profiles will be very similar to USACE's profiles, with some minor differences resulting from the different methodologies used in the models and local irregularities in the channel geometry. Any significant differences in the profiles will be reviewed and resolved.

Once it is agreed that the two-dimensional model accurately reproduces USACE's design water surface profile, the model will be modified to include planned changes in the channel and shoreline geometry. In some areas of the channel this may require little or no changes to the USACE input data. Significant changes to the model will be required in areas where the waterside levee slopes will be modified and/or realigned by flattening of the slopes; addition of new benches, terraces, plazas, and floodwalls; addition of pedestrian and maintenance ramps and paths; addition of erosion protection to the slopes, including bio-technical erosion techniques; new facilities such as piers and bridge structures placed in the river; and addition of vegetation along the river that will change the hydraulic roughness of the river.

The two-dimensional model will then be used to assist in preliminary design of the project features. The preliminary geometry of the project features will be input into the model and water surface profiles, two-dimensional flow velocities, and areas of local turbulence will be identified. These calculations will be used to adjust the size, geometry, location and/or orientation of project features and to identify areas where potential scour requires erosion protection. The model will be used interactively with the design team to develop an overall project configuration that is consistent with the project goals and flood control needs. This preliminary model will then be reviewed with USACE to assure that all Title 23 and guideline requirements are met.

### 8.3 **Prepare Construction Documents (CD) to 60% Completion**

Note: Site will require approximately 30 base sheets at 1"=20'-0"

- Existing Conditions / Demolition Plan
- Layout Plan
- Materials Plan
- Grading/Drainage Plan
- Levee Locations and Features Plan
- Railroad Modification Plan
- Utilities Plan
- Electrical/Lighting Plan
- Planting Plan
- Irrigation Plan

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- Construction Details
- Technical Specifications (CSI Format)
- 8.4 Prepare 60% CD level Cost Estimate**
- 8.5 Deliver 60% Documents and Cost Estimate to City for Review**
- 8.6 Meet with City Staff**  
Meet with City to discuss review comments  
Reconcile Team's and City's cost estimates  
Obtain approval to proceed towards 95% completion
- 8.7 Prepare Construction Documents to 95% Completion**
  - Existing Conditions / Demolition Plan
  - Layout Plan
  - Materials Plan
  - Grading/Drainage Plan
  - Levee Locations and Features Plan
  - Railroad Modification Plan
  - Utilities Plan
  - Electrical/Lighting Plan
  - Planting Plan
  - Irrigation Plan
  - Interpretive Display Plan
  - Erosion Control Plan
  - Construction Details
  - Site Furniture Selection
  - Technical Specifications (CSI Format)
- 8.8 Prepare 95% CD level Cost Estimate**
- 8.9 Deliver 95% CD Documents and Cost estimate**  
Provide documents and estimate for City review.
- 8.10 Meet with City Staff**  
Discuss City review comments  
Reconcile Team's and City's cost estimate  
Obtain approval to complete documents
- 8.11 Prepare 100% Construction Drawings and Technical Specifications**
- 8.12 Meet with City Staff**  
Review final documents  
Obtain approval for final delivery
- 8.13 Assemble Construction Documentation for Package Printing**
- 8.14 Deliverables**
  - 60% Construction Drawings (10 sets)
  - 60% Technical Specifications (10 sets)
  - 60% level Construction Cost Estimate (10 sets)
  - 95% Construction Drawings (10 sets)
  - 95% Technical Specifications (10 sets)
  - 95% level Final Construction Cost Estimate (10 sets)
  - 100% Technical Specifications (10 sets)
  - 100% level Final Construction Drawings for Printing Package (5 hard copy sets and electronic files)

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- Meeting notes
  - Monthly Progress Reports
- 8.15 Meeting Attendance**
- Meeting with City Staff (4 meetings)

**TASK NINE: BIDDING ASSISTANCE**

- 9.1 Attend Pre-Bid Meeting**
- 9.2 Respond to Bidder Questions as Appropriate**
- 9.3 Issue Bid Addendums as Required**  
Assume two bid addendums
- 9.4 Respond to Substitution Requests**
- 9.5 Review of Bids**  
Assist the City in the evaluation of Bids received

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**TASK TEN: CONSTRUCTION ADMINISTRATION SERVICES**

- 10.1 Attend Pre-Construction Conference**
- 10.2 Review Submittals and Shop Drawings as Required**
- 10.3 Review Change Order Requests as Required**
- 10.4 Issue Construction Documentation Clarifications as Required**
- 10.5 Attend periodic Construction Administration Site Visits as Required at the following Construction Mileposts:**
  - Completion of rough grading (1 visit)
  - Layout of site improvements (3 visits)
  - Layout of drainage structures (1 visit)
  - Nursery visit to inspect plant material (2 visits)
  - Irrigation coverage test (2 visits)
  - Layout of plant material (2 visits)
  - Acceptance for substantial completion (1 visit)
  - Conduct project walk through and produce punch list (2 visits)
  - Final Acceptance (1 visit)
  - Assist in project closeout
- 10.6 Deliverables**
  - Change orders as required
  - Clarifications as required
  - Field Reports
  - Substantial Completion Acceptance Letter
  - Punch List
  - Final Acceptance Letter

## EXHIBIT B

### CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

#### FEE SCHEDULE/MANNER OF PAYMENT

1. **CONSULTANT's Compensation.** The total of all fees paid to the CONSULTANT 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 **\$2,485,577** (Two million four hundred eighty-five thousand five hundred seventy-seven dollars)
2. **Billable Rates.** CONSULTANT shall be paid for the performance of Services as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONSULTANT's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONSULTANT 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 CONSULTANT.**
  - A. Payments to CONSULTANT shall be made within a reasonable time after receipt of CONSULTANT's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONSULTANT may request payment on a monthly basis. CONSULTANT 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 CONSULTANT 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 CONSULTANT for correction. CITY shall not be responsible for delays in payment to CONSULTANT resulting from CONSULTANT's failure to comply with the invoice format described below.

Laura Sainz  
City of Sacramento - Economic Development Department  
1030 15<sup>th</sup> Street, Suite 250, Sacramento, CA 95814  
Phone: (916) 808-2677 / Fax: (916) 808-8161  
[Lsainz@cityofsacramento.org](mailto:Lsainz@cityofsacramento.org)

5. **Additional Services.** Additional Services are those services related to the scope of services of CONSULTANT 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 CONSULTANT.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONSULTANT shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONSULTANT's costs for all Services and Additional Services performed under this Agreement and records of CONSULTANT'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.** CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONSULTANT hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONSULTANT's breach of this Section 7.

# Attachment 1 to Exhibit B

Contract of Services – Exhibit A  
 The Docks Riverfront Promenade  
 WORK PLAN – CONTRACT A  
 August 16, 2005

## Design Service Fees – Contract A

The following summarizes the cost per task to be billed on a percentage completion.

TASK	Labor Cost
Task One: Project Management	\$140,364
Task Two: Obtain and Review of Existing Technical Data	\$94,670
Task Three: Data Gathering and Field Investigation	\$251,363
Task Four: Preliminary Promenade Design	\$221,985*
Interpretive Plan Option	\$33,722
Task Five: Develop Public Arts Program	\$41,196
Task Six: Permitting Services	\$92,461
Prepare Biological Assessments Option	\$13,222
Task Seven: Maintenance Recommendations	\$16,848
Task Eight: Construction Documents	\$993,284
Hydraulic Modeling Option	\$80,236
Fountain Mechanical and Electrical Option	\$25,000
Task Nine: Bidding Assistance	\$24,158
Task Ten: Construction Administration Services	\$149,284
<b>Total Estimated Reimbursable Expenses</b>	<b>\$277,784</b>
<b>Total Labor Cost &amp; Estimated Expenses</b>	<b>\$2,455,577</b>

\* The balance of Task Four fees will be billed towards Contract B.

The following summarizes the cost per task to be billed on a time and material basis.

TASK	Labor Cost
Task: Reclamation Board Process	\$30,000
<b>Total Labor Cost</b>	<b>\$30,000</b>

**EXHIBIT C**  
**CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**  
**FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall  Not furnish any facilities or equipment for this Agreement; or  
 furnish the following facilities or equipment for the Agreement;

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**EXHIBIT D  
CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**

**GENERAL PROVISIONS**

**1. Independent Contractor.**

- A. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONSULTANT nor CONSULTANT'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 CONSULTANT under the provisions of this Agreement, and CONSULTANT shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONSULTANT 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 CONSULTANT'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 CONSULTANT, 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 CONSULTANT for accomplishing such results. To the extent that CONSULTANT 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 CONSULTANT's sole discretion based on the CONSULTANT's determination that such use will promote CONSULTANT's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONSULTANT 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 CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. 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 CONSULTANT. It is further understood and agreed that CONSULTANT shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONSULTANT'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 CONSULTANT. CONSULTANT may represent, perform services for, or be employed by such additional persons or companies as CONSULTANT sees fit provided that CONSULTANT does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONSULTANT represents and warrants that CONSULTANT has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONSULTANT to practice its profession or provide any services under the Agreement. CONSULTANT represents and warrants that CONSULTANT 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 CONSULTANT to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONSULTANT is an out-of-state corporation, CONSULTANT 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.

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3. **Time.** CONSULTANT 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 CONSULTANT'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. **CONSULTANT Not Agent.** Except as CITY may specify in writing, CONSULTANT and CONSULTANT's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT and CONSULTANT's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONSULTANT 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 CONSULTANT's performance of Services under this Agreement. CONSULTANT 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. CONSULTANT 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 CONSULTANT is or employs a former officer or employee of the CITY, CONSULTANT and any such employee(s) shall comply with the provisions of Sacramento Municipal 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, CONSULTANT 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. CONSULTANT agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONSULTANT 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, CONSULTANT 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 CONSULTANT of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

## 7. CONSULTANT Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONSULTANT 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. ~~CONSULTANT shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.~~
- B. CONSULTANT 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 to the extent that all or any part of the information prepared, produced, or provided by CONSULTANT pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall notify CONSULTANT not later than thirty (30) days after CITY is served with any such claim, action, lawsuit or other proceeding. CONSULTANT's obligations under this Section 7B shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONSULTANT by CITY, whether received in connection with CONSULTANT's proposal to CITY or in connection with any Services performed by CONSULTANT, 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 CONSULTANT of any request for the disclosure of such information. The CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT of any rights regarding the information designated "trade secret" by CONSULTANT, and such information shall be disclosed by CITY pursuant to applicable

procedures required by the Public Records Act.

E. Consultant may use on other projects any standard industry specifications and detailing provided to the City but not prepared exclusively for the City.

8. **Standard of Performance.** CONSULTANT shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONSULTANT's profession in California. All products of whatsoever nature that CONSULTANT 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 CONSULTANT's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONSULTANT shall assign only competent personnel to perform Services pursuant to this Agreement. CONSULTANT shall notify CITY in writing of any changes in CONSULTANT'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 CONSULTANT 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, CONSULTANT 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 CONSULTANT's performance hereunder, in whole or in part, by giving a written notice of suspension to CONSULTANT. If CITY gives such notice of suspension, CONSULTANT 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 CONSULTANT. If CITY gives such notice of termination, CONSULTANT shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONSULTANT 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 CONSULTANT the reasonable value of Services rendered by CONSULTANT prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONSULTANT had the Agreement not been terminated or had CONSULTANT completed the Services required by this Agreement. In this regard, CONSULTANT 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 CONSULTANT. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

**10. Indemnity.**

A. Indemnity: CONSULTANT shall indemnify and save harmless, CITY, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable 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"), to the extent such Liabilities are caused by or arise from any negligent act or omission or reckless or willful misconduct of CONSULTANT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not (i) such Liabilities also are caused in part by the passive negligence of the CITY, its officers or employees, (ii) the CITY, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the CONSULTANT, or (iii) such Liabilities are litigated, settled or reduced to judgment.

B. Obligation to Defend: CONSULTANT shall, upon CITY's request, defend at CONSULTANT's sole cost any action, claim, suit, cause of action or portion thereof that asserts or alleges Liabilities to the extent such liabilities caused by or arising from any negligent act or omission or reckless or willful misconduct of CONSULTANT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 10, 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 CONSULTANT 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, CONSULTANT shall maintain the insurance coverage described in this Section 11.

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

It is understood and agreed by the CONSULTANT 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 CONSULTANT 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, 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 on an occurrence basis 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 occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONSULTANT.

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

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"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." \_\_\_\_\_ (CONSULTANT 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 Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONSULTANT.

No Workers' Compensation insurance shall be required if CONSULTANT 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." \_\_\_\_\_ (CONSULTANT 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 if required by the CITY by selecting the option below:

\_\_\_\_\_ Professional liability insurance is required and must be continued for at least \_\_\_\_\_ year(s) following the completion of all Services and Additional Services under this Agreement.

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 CONSULTANT, products and completed operations of CONSULTANT, and premises owned, leased or used by CONSULTANT. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

\_\_\_\_\_ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (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, CONSULTANT's insurance coverage 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 CONSULTANT'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 CONSULTANT'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:V. 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 Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONSULTANT 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) 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 CONSULTANT and/or cancel the Agreement if the insurance is canceled or CONSULTANT otherwise ceases to be insured as required herein.

F. Subcontractors

CONSULTANT 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.

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12. **Equal Employment Opportunity.** During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest, agrees as follows:
- A. Compliance With Regulations: CONSULTANT 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: CONSULTANT, 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. CONSULTANT 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 CONSULTANT for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONSULTANT of CONSULTANT'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: CONSULTANT 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 CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT 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 CONSULTANT 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 CONSULTANT under this Agreement until CONSULTANT complies;
- (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONSULTANT 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. CONSULTANT 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 CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONSULTANT 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 CONSULTANT, and by CITY, in accordance with applicable provisions of the Sacramento Municipal 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 CONSULTANT, 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 CONSULTANT are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONSULTANT under this Agreement. In recognition of this interest, CONSULTANT 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.
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## 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 Municipal 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 \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

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

#### DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

# Attachment A



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

On August 22, 2006 your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for landscape and civil engineering design for the Docks Area promenade/parkway, and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento Municipal 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
- Any other benefits given to employees
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits

(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  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor

Sacramento, CA 95814-2714

○ 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  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2714

- 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.