

PROJECT NAME: Quality Assurance Services – eCAPS
DEPARTMENT: Information Technology
DIVISION: Administration

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

Pacific Group Consulting, Inc.
2025 Fairview Avenue East, Suite Q
Seattle, Washington 98102
Phone (206) 343-7241 Fax (206) 325-3129

("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

By: _____

Gustavo F. Vina, Assistant City Manager
For: Ray Kerridge, City Manager

APPROVED TO AS FORM:

Janeth San Pedro
City Attorney

ATTEST:

City Clerk

Attachments

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

CONSULTANT:

Pacific Group Consulting Inc
NAME OF FIRM

91-1582291
Federal I.D. No.

State I.D. No.

149613
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

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

Timothy C. Easton
Signature of Authorized Person

TIMOTHY C. EASTON, PRESIDENT
Print Name and Title

Additional Signature (if required)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Consultant: **Pacific Group Consulting, Inc.**

Address: **2025 Fairview Avenue East, Suite Q, Seattle, Washington 98102**

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 AOrdinance@).
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.

Timothy C. Easton
Signature of Authorized Representative

Nov. 25, 2008
Date

TIMOTHY C. EASTON
Print Name

PRESIDENT
Title

EXHIBIT A

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Stephen R. Ferguson, Chief Information Officer
1000 I Street, Suite 120
Sacramento, CA 95814
Phone (916)-808-8600 Fax (916) 808-5087/
sferguson@cityofsacramento.org

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

The CONSULTANT Representative for this Agreement is:

Timothy C. Easton, President
Pacific Group Consulting, Inc.
2025 Fairview Avenue East, Suite Q
Seattle, Washington 98102
Phone (206) 343-7241 Fax (206) 325-3129
tceaston@pcgsea.com

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 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 Attachment 1 to Exhibit A.

ATTACHMENT 1 TO EXHIBIT A

1. STATEMENT OF WORK

The City of Sacramento (City) requires experienced, professional, and independent Quality Assurance (QA) consulting services for the City's eCAPS Project. The City is replacing its existing financial management and human resource computer systems with an Enterprise Resource Planning (ERP) system. PeopleSoft application software, provided by Oracle, will be implemented by the City with the assistance of CherryRoad, the City's system integrator for the project.

The eCAPS project will be accomplished through the work of City staff, CherryRoad consultants, who will implement the new eCAPS/ERP system, and a Quality Assurance (QA) consultant who will independently monitor and report upon the quality of the work done by the City and its contractors in implementing the new ERP system.

In providing QA work under this contract, Timothy C. Easton, President of Pacific Consulting Group, Inc. (PCG), will serve as PCG's QA Manager, and Robert S. Fuller will serve as PCG's Lead QA Consultant. Other consultants from PCG and AgreeYa, a PCG subcontractor, will assist. During the term of this contract in order to ensure independence, PCG will report directly to the eCAPS Project Sponsors, the principal client, throughout the term of this contract.

WORK TO BE PERFORMED

PCG will use PCG's Quality Project Methodology (QPM), which PCG developed based upon best practices from numerous IT projects and other sources including the Project Management Body of Knowledge (PMBok) and the Institute of Electrical and Electronic Engineers (IEEE) standards for quality assurance on technology projects. The QPM steps that PCG will follow on the ERP System Project are described below.

- **Quality Assurance Project Planning** – PCG will develop, in cooperation with the City, a detailed Quality Assurance Work Plan depicting the QA deliverables, milestones and tasks to be completed for the project. Our detailed work plan will mirror the overall ERP project work plan and schedule. PCG will make our final staffing assignments and scheduling during this task.
- **Schedule Management** – PCG will review and monitor work plans including schedule and resources. PCG will include our independent analysis of this information in our monthly QA status reports.
- **Issue Management** – A critical component of providing QA services is to provide proactive recommendations in advance of an actual problem. PCG will provide early warning signals to the project team throughout the project by identifying issues and resolutions at the point closest to their origination. If the project team cannot resolve critical issues or if there is disagreement with the resolution, the Dispute Resolution Process described in section 8 below will be initiated. PCG will assist in ensuring that issues are addressed at the right level and in a timely fashion.

All significant project issues that potentially impact schedule, resources and quality will be appropriately communicated and documented. High-risk issues, with potentially significant project impact, will be tracked and communicated in PCG's QA status reports. This will

significantly reduce the possibility of any “surprises” to City management. PCG will track the resolution of all QA identified issues and will monitor the project team issue tracking tools.

- **Risk Management** – PCG will identify potential risks to successful project completion, mitigation options and responsibility for corrective action. PCG will review potential risks and make risk mitigation recommendations to the project management and the steering committee. PCG will monitor the project risks in our monthly QA status reports.

- **Quality Management** – PCG expects that the City project team, the software vendor and other City consultants will prepare numerous deliverables throughout the project. PCG will review and critique selected drafts of the key project deliverables as requested and will provide recommendations for improvement based upon best practices and our experience. PCG will review and report on software testing plans and samples of test results as well as sample changes in City business practices identified and recommended by the project team. PCG will review and provide written feedback on the CherryRoad deliverables that are identified in the tables below. In addition, PCG will review other City and CherryRoad work products, as appropriate, over the course of the project.

Table 1 - Phase 1 CherryRoad Financial Deliverables

Deliverable ID	Deliverable Description
P1FIN003	Pre-project Planning and Controls
P1FIN004	Fit/Gap and Requirements Analysis
P1FIN005	Gap Resolution Document
P1FIN006	Detailed Project Plan
P1FIN007	Project Scope Document
P1FIN008	Organizational Readiness Assessment
P1FIN010	Conversion Plan and Specifications
P1FIN011	Interface Plan and Specifications
P1FIN013	Customization Plan and Specifications
P1FIN015	Design Document
P1FIN016	Test Strategy
P1FIN017	Training Strategy
P1FIN018	Change Management Strategy and Plan
P1FIN019	Communication and Sponsorship Strategy
P1FIN020	Communication Plan
P1FIN026	Deployment Plan

Table 2 - Phase 1 CherryRoad Human Resource Deliverables

Deliverable ID	Deliverable Description
P1HR002	Pre-project Planning and Controls
P1HR003	Fit/Gap and Requirements Analysis

Deliverable ID	Deliverable Description
P1HR004	Gap Resolution Document
P1HR005	Detailed Project Plan
P1HR006	Project Scope Document
P1HR007	Organizational Readiness Assessment
P1HR009	Conversion Plan and Specifications
P1HR010	Interface Plan and Specifications
P1HR012	Customization Plan and Specifications
P1HR014	Design Document
P1HR015	Test Strategy
P1HR016	Training Strategy
P1HR017	Change Management Strategy and Plan
P1HR018	Communication and Sponsorship Strategy
P1HR019	Communication Plan
P1HR021	Test Plan
P1HR023	Training Plan
P1HR024	Training Materials
P1HR025	Deployment Plan

- **Project Work Products, Schedule and Activity Monitoring** – PCG will continually monitor work activities, interim work products and project correspondence to assess status. PCG will attend critical project meetings to observe progress and monitor issues. As the project nears completion, PCG will work with the project team to evaluate the project's readiness for implementation.
- **User Readiness Assessments** – PCG pioneered the QA user readiness assessment for large complex projects. PCG will visit with users, as described below, to ascertain whether they are receiving adequate support from the project team and are making progress in readying their operations for the new system. PCG will develop written readiness assessments for City management identifying any issues that need resolution prior to implementation such as:

- ✓ User Business Processes
- ✓ Infrastructure/Production Environment
- ✓ Data Cleanup and Conversion
- ✓ Interfaces
- ✓ Departmental Reporting
- ✓ Staffing
- ✓ Training
- ✓ Security

PCG will perform two rounds of readiness assessments, including individual departmental readiness reports, for the City's eight largest or most critical departments as selected by the City. PCG will perform these two rounds for both the financial and HR/payroll components of Phase 1. PCG will meet with one to two key contacts at each department to conduct the assessments.

- **Project Reporting** – PCG will prepare and present written monthly QA status reports for the ERP team, governance bodies and City management. The written report will address the topics such as:
 - ✓ QA Assessment of Project Activities and Assessment Ratings
 - ✓ Progress and Deliverable Status Overview
 - ✓ Financial and Resource Management Status
 - ✓ Issue and Risks
 - ✓ Recommendations.
- **Monthly Project Steering Committee Meetings** – PCG will attend and participate in the meetings of the eCAPS steering committee and present written reports each month.
- **Periodic Meetings with the City Management and/or Steering Committee Members** – PCG shall meet with the eCAPS project sponsor at least monthly and periodically with other steering committee members. PCG will review the overall project status, significant policy issues and recommendations for improvement.
- **Project Team and User Interviews** – PCG will conduct periodic individual interviews with project staff and users to review project activities, progress, issues and problems.
- **Project Summary Report** – These are summary reports that will be prepared at the conclusion of the financial and HR/payroll sub-projects that will highlight the major project successes and areas needing improvement. Observations and recommendations will be included.

2. ASSUMPTIONS

This statement of work and PCG's fees are based upon the following assumptions:

- eCAPS Project start date on or about January 8, 2007
- Financial modules implementation in November 2007
- Payroll and Human Resource implementation in February 2008
- PCG's schedule of work will be as shown on the Chart "eCAPS Project QA Estimate" in Section 3 below

3. eCAPS PROJECT QA ESTIMATE

CITY OF SACRAMENTO
eCAPS PROJECT
QA ESTIMATE BY CONSULTANT

Staff	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Jan-08	Feb-08	Mar-08	Total Hr	Rate	Total Cost
Fuller	56	48	48	48	48	28	48	48	56	36	60	36	32	32	632	\$219	\$138,408
Easton	40	32	24	36	48	20	36	36	40	20	48	24	16	24	444	\$225	\$99,900
Paul	56	40	32	56	36	28	48	40	48	20	56	24	8	4	496	\$185	\$91,760
Roseanne	8	4	4	4	4	4	4	4	4	4	4	4	4	4	60	\$185	\$11,100
Wieland	10	10	4	12	24	24	12	24	24	4	24	8	4	4	172	\$70	\$12,040
Total	170	142	112	156	160	84	148	152	172	84	192	96	64	72	1804		\$353,208
Fuller	\$ 12,264	\$ 12,264	\$ 10,512	\$ 10,512	\$ 10,512	\$ 6,132	\$ 10,512	\$ 10,512	\$ 12,264	\$ 7,884	\$ 13,140	\$ 7,884	\$ 7,008	\$ 7,008	\$ 7,008	\$	\$138,408
Easton	9,000	7,200	5,400	8,100	10,800	4,500	8,100	8,100	9,000	4,500	10,800	5,400	3,600	5,400	5,400		\$99,900
Paul	10,360	7,400	5,920	10,360	6,660	5,180	8,880	7,400	8,880	3,700	10,360	4,440	1,480	740	740		\$91,760
Roseanne	1,480	740	740	740	740	740	740	740	740	740	740	740	740	740	740		\$11,100
Wieland	700	700	280	840	1,680	280	840	1,680	1,680	280	1,680	560	280	560	560		\$12,040
Total	\$33,804	\$28,304	\$22,852	\$30,552	\$30,392	\$16,832	\$29,072	\$28,432	\$32,564	\$17,104	\$36,720	\$19,024	\$13,108	\$14,448	\$353,208		\$353,208

Column Heading Legend:

Blue Months	Departmental Readiness - Financial
Yellow Months	Departmental Readiness -- HR/Payroll
Green Months	Go-Live (Financial and HR/Payroll)

4. QUALITY ASSURANCE DELIVERABLES

(A) The following list outlines the QA deliverables that PCG will deliver to the City over the course of the engagement. Due to the variable nature of QA work, it is impractical to anticipate the exact timing or in some cases the frequency of some deliverables.

PCG QA Deliverable	Number/Schedule
QA Work Plan	1 in January 2007
QA Status Reports	14, Monthly
Deliverable Reviews	As identified in the tables in Section 1
Special QA Reports	As Required
Departmental Financial Readiness Reports	8, as scheduled, Round 1 Reviews
Departmental Financial Readiness Reports	8, as scheduled, Round 2 Reviews
Departmental HR/Payroll Readiness Reports	8, as scheduled, Round 1 Reviews
Departmental HR/Payroll Readiness Reports	8, as scheduled, Round 2 Reviews
Financial Project Summary Report	1 in December 2007
HR/Payroll Project Summary Report	1 in March 2008

The above QA deliverable schedule is an estimate since the deliverables are dependent upon other project activities that are unknown or can change over the course of the project. However, at a minimum each month, a QA status report will be delivered.

(B) **Deliverable Acceptance Process.** Drafts shall be provided, when applicable, of each deliverable prior to formal submittal. The City shall review and provide written approval or comments, as appropriate. The City will identify in writing any required changes, deficiencies, and/or additions necessary within five (5) business days of receipt of each draft deliverable. For purposes of this section, business days do not include City holidays. PCG will revise each deliverable based on feedback from the City and submit a final version of the deliverable for review and sign-off by the City. The City shall respond to resubmitted deliverables within five (5) business days. A period greater than five (5) business days will be allowed upon mutual agreement of both parties.

In the event that the City fails to respond to a submitted deliverable as required in the preceding paragraph, notice shall be given of such event to the City representative identified in Exhibit A to this Agreement. In the event that no response is received within five (5) business days thereof, the deliverable will be deemed accepted.

A "sign-off" form for the City to indicate its approval, disapproval, or other comment shall accompany each deliverable submission. If the City and PCG are unable to come to an agreement regarding the acceptance of a deliverable, the Dispute Resolution Process described in section 8 below will be initiated.

5. WARRANTIES AND DISCLAIMER

CONSULTANT represents and warrants that the services and all other deliverables provided by CONSULTANT hereunder will (i) meet the acceptance or completion criteria as

set forth herein; (ii) be free from all material defects; and (iii) be performed in a professional manner and consistent with the generally accepted industry standards for quality assurance consulting services.

EXCEPT AS OTHERWISE EXPRESSLY DESCRIBED IN THIS AGREEMENT, THE CONSULTANT DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS, [EXPRESS OR IMPLIED, ORAL OR WRITTEN], WITH RESPECT TO THE SERVICES PROVIDED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE [WHETHER OR NOT THE CONSULTANT KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE] WHETHER ARISING BY LAW OR BY REASON OF CUSTOM OF THE TRADE.

6. LIMITATION ON LIABILITY

EXCEPT FOR INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS AGREEMENT, WHICH WILL BE EXEMPT FROM THIS LIMITATION ON LIABILITY, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA, REVENUE, USE OR PROFITS INCURRED BY EITHER PARTY OR ANY THIRD PARTY, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL IN ANY EVENT EXCEED **TWO (2) TIMES** THE TOTAL CONTRACT PRICE SET FORTH IN SECTION 1 OF EXHIBIT B.

7. FORCE MAJEURE

Neither party shall be liable for, and each party shall be excused from, any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including, but not limited to, governmental actions, fire, work stoppages, shortages, civil disturbances, transportation problems, interruptions of power or communications, failure of suppliers or subcontractors, natural disasters or other acts of God.

8. DISPUTE RESOLUTION PROCESS

Any dispute, disagreement, claim or controversy between the parties arising out of or relating to this Agreement (the "Disputed Matter") shall be resolved by first having the PRESIDENT for CONSULTANT and the Project Manager for the CITY meet for the purpose of endeavoring to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to a meeting of the Project Steering Committee. If a resolution to such dispute does not occur during such meeting or within three (3) business days thereafter, the parties agree to elevate the dispute to the PRESIDENT level of CONSULTANT and the Assistant City Manager of the CITY. Failing such mutual agreement to resolve the dispute, the parties may pursue any other legal recourse available to it. Except for seeking equitable or injunctive relief, no formal proceedings for the judicial resolution of such dispute may begin until the dispute resolution procedure described herein is completed.

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 \$353,208.
2. **Billable Rates.** CONSULTANT shall be paid for the performance of Services on an hourly rate 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.
- D. Requests for payment shall be sent to:

Information Technology Department
1000 I Street, Suite 120, Sacramento CA 95814
Phone (916) 808-8600 Fax (916) 808-5087
Attn: Stephen R. Ferguson, Chief Information Officer

- 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

PAYMENT PROCEDURES

PCG will invoice the City for actual services rendered in the prior month in accordance with the approved QA Work Plan and the approved eCAPS Project Work Plan beginning with the effective date of this contract for all services rendered, including all expenses. The City's Chief Information Officer shall approve all PCG invoices prior to payment by the City.

Invoices shall be based on the hourly rates stated in the "eCAPS Project QA Estimate" set forth in section 3 of Attachment 1 to Exhibit A. Due to the independent advisory nature of QA consulting work, the need to change work priorities to match current issues/activities and the variability of short-term project schedules outside of PCG's control, the hours and fees by month depicted in the eCAPS Project QA Estimate are estimates only and are for planning purposes only. However, in no event will the combined total compensation and reimbursement for expenses to PCG hereunder exceed the aggregate total amount of \$353,208.

Invoices shall be accompanied by 1) the current month's billing for work performed by PCG based upon actual hours and hourly rates by individual, and 2) identification of all QA work activities performed and QA deliverables prepared by PCG during the current month. In the event the City does not accept the deliverables and approve the invoice, PCG shall re-perform services and/or correct the deficiencies noted for the City's approval and subsequent payment. Payment shall be made no later than thirty (30) days after receipt of a properly submitted and undisputed invoice.

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

CITY shall furnish the following facilities or equipment for the Agreement:

1. City shall provide PCG consultants with adequate working space, telephones and efficient access to electronic project files.
2. City shall provide reasonable access to project sponsor, steering committee members, project staff, and city department personnel.

**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.
 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, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. 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 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 make reasonable efforts to notify CONSULTANT not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONSULTANT of its obligations hereunder, which 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.
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, recklessness 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 caused by or arising from any negligent act or omission, recklessness or willful misconduct of CONSULTANT, its sub-consultants, 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:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement."
OCG (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:

X 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." KS
(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:

X Professional liability insurance is required and must be continued for at least 1 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.

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.

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 directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

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

Attachment A



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

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento 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
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

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

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

You May . . .

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

City of Sacramento
Contract Services Unit
915 I Street, 2nd 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, 2nd 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.