

PROJECT #: PN: XN58, JN: 9284
PROJECT NAME: 3RD STREET CSS RELIEF SEWER PRELIMINARY DESIGN
DEPARTMENT: Utilities Department
DIVISION: Engineering Services Division

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

Nolte Associates, Inc.
2495 Natomas Park Dr. 4th Floor
Sacramento, CA 95833
Phone: 916-641-9100
Fax: 916-641-9222

("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 City 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 City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. 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

DLB DLB

By: _____

Print name: _____

Ray Kerridge, City Manager

APPROVED TO AS FORM.

[Signature]
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:

Nolte Associates, Inc

NAME OF FIRM

94-2706173

Federal I.D. No.

1218149

State I.D. No.

6845

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

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

[Signature], CFO

Signature of Authorized Person

John A. Dallen, Jr. / CFO

Print Name and Title

[Signature]

Additional Signature (if required)

Marcela Eggleston, Asst. Secretary

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Consultant: Nolte Associates, Inc.

Address: 2495 Natomas Park Dr. 4th Floor, Sacramento, CA 95833

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 City 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

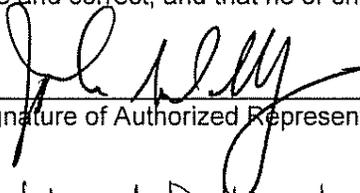
Consultant agrees that if Consultant offers any of the above-listed employee benefits, Consultant will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

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.



Signature of Authorized Representative

12/5/2006

Date

John A. Datten, Jr.

Print Name

CFO

Title

EXHIBIT A
CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Dale Mathison
Associate Civil Engineer
City of Sacramento, Department of Utilities
1395 35th Avenue, Sacramento, CA 95822
Ph (916) 808-1911 / Fax (916) 808-1497
dmathison@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:

William Ishmael
Senior Vice President/Principal in Charge
2495 Natomas Park Dr, 4th Floor, Sacramento, CA 95833
Ph (916) 641-9100 / Fax (916) 641-9222
william.ishmael@nolte.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 X is not ___ [check one] 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. This agreement follows pre-qualification and selection of the Consultant to provide professional engineering services in accordance with the Department of Utilities 2006 Qualified Consultants for Combined Sewer System (CSS) Mitigation Projects.
- 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.

ATTACHMENT 1 TO EXHIBIT A

CONSULTANT SCOPE OF SERVICES 3rd STREET COMBINED SEWER SYSTEM RELIEF SEWER PROJECT

The 3rd Street combined sewer system (CSS) relief sewer project will provide relief for stormwater runoff and sanitary sewer flows within the City's Central Business District (CBD) pipe and pump station network. Future land use alternatives are currently being revised under the General Plan Update. Land use changes in the Richards Area and the Railyards will intensify development densities, which will increase sanitary sewer flows generated from these areas. City staff has determined that this additional CSS outflow requires a mitigation project to avoid substantial increases in CSS outflows at vulnerable downstream locations

The City has identified a solution to divert sanitary sewer flows from the Richards and Railyard areas to a new sewer pipeline in 3rd Street that would provide relief to the existing CSS. The solution entails routing the Richards area and the Railyards flows under I Street, then south along 3rd Street to T Street. At T Street the flow is directed to the east and is conveyed along T Street for two blocks until it terminates at the existing 60-inch CSS pipeline in 5th Street. The project will require approximately 5,600 ft of large diameter pipeline to be installed. Although the exact pipeline size is not yet known, the City expects the diameter to be in the range between 36-inches and 54-inches. A scope of services outlining the tasks required to prepare a preliminary design for the CSS along portions of 3rd Street and T Street is summarized below.

TASK 1 – PROJECT MANAGEMENT

A successful project begins with effective project management. Communication is the key. Communication will occur verbally, electronically, and in writing. Verbal communication will occur through face-to-face progress meetings, technical workshops, and over-the-shoulder review sessions. Meetings will be organized with a concise agenda, developed in advance with the City's project manager. To facilitate documenting the results of various meetings, meeting minutes will be prepared.

1.1 Project Startup

Upon notice to proceed, a project kickoff and client expectations meeting will be held to acquaint all project participants with the project scope, approach, goals, and schedule. Discussion items to be addressed will include a review of the significant engineering issues associated with the project, a description and clarification of the approach required to respond to these issues, a delineation of existing data available for the project as well as required new data, and a verification of project milestone dates. A project startup memorandum of the results of the kickoff meeting will be distributed to all participants. The project startup memorandum will contain, as a minimum:

1. Project Description
2. Summary of Scope of Services
3. Project Schedule/Milestone Events
4. Review of Significant Engineering Issues
5. Items to be supplied by City

6. Project Contacts (including names, addresses, telephone/fax numbers, e-mail addresses, and responsibilities)
7. Budget/Job Cost Accounting

The project startup memorandum will be submitted to the City within one week following the kickoff meeting.

1.2 Project Status Meetings

Input and feedback from key project stakeholders are critical for building consensus and acceptance. Brainstorming sessions or workshops are the venue for soliciting input. Design review meetings will be held with City staff following significant deliverables. The agenda items at the review meetings will include status of design elements, unresolved project issues, key milestone events, upcoming schedule, and budget status. Meeting minutes will be prepared by the Consultant and will be submitted to the City. In addition, the Consultant will prepare and submit documentation describing the resolution of all City review comments.

1.3 Schedule

The Consultant shall meet the six month design schedule (from the Notice to Proceed to Preliminary Design Completion). A schedule will be provided at the kickoff meeting and any revisions will be included in the meeting minutes.

Deliverables – Task 1

1. Kickoff meeting agendas and minutes
2. Revised Schedule

TASK 2 – WEIR CONCEPTS & PIPE SIZING REQUIREMENTS

The combined sewer flow entering the upper end of the project at 3rd and I Streets is almost entirely separated sanitary sewage. This flow will consist of the separated sewage diverted from the Richards area, the separated sewage from the proposed Railyards project, and the metered 'first flush' (bleed) from the proposed Railyards drainage detention basin.

Determination or confirmation of pipeline sizes will be based on the estimated quantity of CSS flows that will be generated by proposed development in the Richards area and the Railyards and from existing and build-out flows in the 3rd Street area. The CSS flows generated in the Richards and 3rd Street areas will be provided by the City. The Consultant will provide the anticipated quantity of CSS flows from the Railyards area as a result of current planning efforts for the Railyards development. Flow quantity data from the City together with Consultant acquired flow data will form the basis for sizing the 3rd Street sewer. In addition, these data will be used to analyze the adequacy of the 24-inch overflow between T and U Streets, which may result in a recommendation to increase the pipeline diameter. Downstream conditions and pipe slopes for the existing 24-inch overflow and the 60-inch CSS pipeline in 5th Street will be provided by the City. The Consultant will not be running the City's SWMM Model but will rely on tailwater information provided by the model.

Based on the anticipated quantity of CSS flows and the downstream conditions in the 60-inch CSS pipelines in 5th Street and the existing 24-inch CSS pipeline (future overflows) a conceptual weir structure will be developed. The conceptual weir layout will be portrayed in plan and profile format and will include proposed dimensions of the weir.

A technical memorandum will be prepared to summarize CSS flow quantities, and recommendations regarding weir geometry, and pipe size requirements for the project. Because of concerns over detention basin bleed flows taking up downstream capacity, an alternative may be developed where the majority of the stormwater bleed from the Railyards is released at night outside of peak wastewater generation periods. A brief cost analysis or trade-off comparison will be performed based on currently available Project and Railyard Project information. The limited analysis will be included in the draft preliminary design and will assist the City in the decision on the amount and timing of stormwater sump bleed flows diverted to the CSS during peak periods.

Deliverables – Task 2

1. Technical memorandum summarizing future buildout land uses, wastewater flows, stormwater flows, weir geometry, and pipe size requirements.

TASK 3 – GEOTECHNICAL ENGINEERING

To confirm previous experience and develop design level data, a geotechnical report will be developed to help manage the cost that can be incurred by encountering unknown soils conditions. The geotechnical investigation will generate information on soils and groundwater conditions which may be encountered during construction. Every effort will be made to schedule the borings when the Sacramento River is at a level that is typical of the anticipated construction season since groundwater level at this location is strongly correlated to river levels. Three test borings will be drilled and sampled to a depth of up to 30 feet below the existing grade. A deep boring will likely be in the area of Capitol Avenue because it is anticipated that the future large diameter pipeline will pass below the existing 24-inch combined sanitary sewer pipeline coming from Old Sacramento. Preliminary modeling efforts suggest that the 24-inch pipeline must remain hydraulically distinct from the larger diameter pipeline. The geotechnical report will include observations and recommendations regarding:

1. Excavation conditions
2. Shoring and bracing considerations
3. Material suitability for engineered fill and backfill
4. Corrosion potential of on-site soils
5. Pavement subgrade quality
6. Effect of groundwater on construction
7. General construction dewatering techniques

Deliverables – Task 3

1. Geotechnical report

TASK 4 – UTILITIES COORDINATION

To mitigate the risks associated with encountering unanticipated underground utilities and to facilitate an accurate design, utilities coordination will consist of the following tasks:

1. Surveying
2. Existing Utilities Information
3. "A" Letters
4. Potholing

4.1 Surveying

City crews will perform a route survey along the proposed sanitary sewer pipeline alignment. It is anticipated that limits of the topography along 3rd Street, between I Street (north of the I-5 on-ramp) and T Street, will extend up to 20 feet beyond the east and west curbs if needed, in order to pick up important features as listed below. Similarly, limits of topography on T Street, between 3rd Street and 5th Street, will extend up to 20 feet beyond the north & south curbs if needed. It is anticipated that the City crews will set controls throughout the project and run a traverse and level to establish horizontal and vertical accuracy.

It is anticipated that the City crews will perform a topographic survey which includes physical surface evidence of the following items on-site and on the adjoining streets:

1. Road cross sections at 50-foot intervals
2. Curb and gutter
3. Sidewalks
4. Driveways
5. Grade breaks
6. Existing fixtures
7. Existing sewer and drain manholes with inverts
8. Existing utilities
9. Existing building corners along 3rd Street
10. Existing trees including diameter & drip line
11. Power poles

The information provided by the City should be on 40-scale sheets in both electronic and hard copies for each session in the field where data is gathered. In addition to the initial survey, field crews are anticipated to gather additional field data after:

1. Potholing is performed
2. Geotechnical borings are performed
3. At least two other occasions, as mutually agreed upon by the City and Nolte.

4.2 Existing Utility Information

Historical record drawings for 3rd Street and along two blocks of T Street will be researched to identify underground utilities within the project alignment. Historical record drawings will be provided by the City. Utilities will be plotted on 1 inch = 40 feet base mapping through a combination of historical data supplemented by field observations. These base maps will be utilized in the development of working

drawings for the proposed improvements. Pothole locations for subsurface explorations will be suggested for subsequent work under Task 4.4. Included in this task will be on-going discussions with the City and utility companies to coordinate and accomplish the work and resolve conflicts such as: horizontal and vertical utility crossings and construction scheduling.

4.3 “A” Letters

An “A” letter providing a preliminary layout of the proposed project will be sent to each of the utility organizations serving the project area. Maps of existing utilities in the project area will be requested to help identify conflicts with the project. Utilities shown on these maps will be coordinated with surface indications from the topographic survey, and plotted on the base maps.

4.4 Potholing

Potholing will be performed on existing underground utilities and is budgeted for 30 locations along the alignment. This number is based on our experience in the downtown area, and assumes a vacuum exploration method. Shallow utilities will not be potholed at this time. Pothole locations will be selected based on: 1) proximity of potential conflict, 2) difficulty of utility relocation (schedule impacts, cost impacts, utility end user impacts, and 3) safety concerns. Prior to performing potholing, a meeting with the City will be held to discuss selected pothole locations. The planned sequence is as follows:

1. Proposed pothole locations are plotted on a copy of the plan-profile sheets.
2. Proposed locations are reviewed in a meeting with the City’s project manager.
3. Locations are shown on a tabulation by station and offset to assist the subcontractor. Stations to be provided to subcontractor in field.
4. Subcontractor is engaged. Subcontractor notifies U.S.A. to initiate pavement marking.
5. Subcontractor excavates to top of pipe and measures from pavement surface to pipe, records data, marks actual center of pipe, and backfills.
6. City measures surface elevations when several potholes have been completed.
7. Depths and elevations are combined to determine pipe elevations.

Deliverables – Task 4

1. Pothole location meeting
2. Pothole location site plan

TASK 5 – PRELIMINARY DESIGN

Upon completion of the data collection and field review steps, the Consultant will prepare the preliminary design. The preliminary design will address concerns regarding pipeline alignment and a structural opinion. These key issues are described in more detail below.

5.1 Pipeline Alignment

The proposed 3rd Street sewer will replace the existing 3rd Street sewer from I Street to T Street, and then continue easterly for two blocks to the 60-inch pipeline at the intersection of 5th and T Streets. Flows below a threshold value (to be determined in consultation with City staff) will follow this T Street

alignment to 5th Street. A weir at 3rd and T Streets will divert flows, which exceed the threshold value during storm events, into an existing 24-inch pipeline connected to the 84-inch pipeline in U Street.

The vertical alignment of the 3rd Street sewer should be depressed sufficiently to pass under an existing sewer pipeline at Capitol Avenue. Flows in these two pipelines will not merge.

The horizontal alignment of a large diameter pipeline in 3rd Street will present a difficult design and construction challenge due to the congestion of existing utilities along most of the route and a trench depth approaching 20 feet in some locations. Traffic impacts from open trench construction will be substantial.

The City wishes to know the maximum diameter pipe that will fit along the 3rd Street alignment. The initial exercise in preliminary design will involve creating alternative alignments in plan that will be overlaid on the existing utilities plans. The alignments will consist of several trench widths/alignments corresponding to increasing pipe diameters. With varying sizes of trench widths, the increasing potential for utility conflict and/or relocation can be assessed. The need for utility relocation or construction of joint utility trenches will be identified.

After delineating conflicts, a review session will be held with the City. The benefit of a larger diameter pipe versus the cost of utilities relocation will be discussed during the workshop.

The draft preliminary design report and final preliminary design report will include plan, profile, and special details drawings. Special details drawings will include the weir structure and a custom connection manhole structure at the 60-inch diameter CSS main in 5th Street. The preliminary design will incorporate City comments from the draft preliminary design as well as potholing information.

5.2 Structural Opinion

The Consultant's structural engineer shall review record drawings provided by the City of the K Street Pedestrian walkway under 3rd Street. A structural opinion will be developed regarding the risk and best approach for placing the new CSS pipeline under the walkway. The structural opinion will be included in the preliminary design.

Deliverables – Task 5

1. Draft preliminary design with draft plan, profiles, and special details.
2. Alignment brainstorming session with City.
3. Final preliminary design with plan, profiles, and special details.

TASK 6 – Quality Assurance/Quality Control (QA/QC) and Constructability Review Programs

Peer review will occur at key milestones in the project by the Consultant's senior design staff. The Consultant's QA/QC and Constructability Review Programs are described below.

6.1 QA/QC Program

The Nolte Team has a longstanding commitment to the formalized process of Quality Control (doing it right the first time) and Quality Assurance (checking to make sure it was done right). We are committed

to providing service to our clients that more than meets project requirements. Our team members take pride in their reputation for creative, thoughtful, and successful engineering planning and design.

At Nolte, we firmly believe that dedication to quality pays off. A dollar spent on quality assurance/quality control during the design phase is worth more than ten dollars in construction costs during project implementation. With this in mind, we strictly adhere to the production of quality design products.

Nolte uses a process where the initial design is prepared, then internally checked, backchecked, corrected, and verified prior to making the initial design submittal. We then receive, discuss, and implement client comments on our initial design, making sure that we fully understand the intent behind the clients' comments. Our designers then proceed to the next step. At this level we also conduct an internal check, backcheck, correction, and verification. This process is all tracked by signing-off on our check print stamp placed on each and every sheet of drawings.

6.2 Constructability Review Program

Separate from the Quality Assurance/Quality Control reviews, Nolte conducts an internal constructability review on the overall plans to help prepare a design that is as constructable as possible. The comments on the plan and profile sheets will highlight constructability challenges and potential practical alternatives. Areas of concern will include: identifying unmanageable traffic impacts, considering groundwater conditions, considering soils conditions, considering open-cut trenching (with dragging a shield), crossing under the K Street Pedestrian tunnel/bridge, and identifying significant utilities conflicts.

Deliverables – Task 6

1. Internal QA/QC marks:
 - a. Draft preliminary design with draft plan, profiles, and special details.
 - b. Preliminary design with plan, profiles, and special details.
2. Internal constructability review set at the draft preliminary design level.

TASK 7 – INITIAL COORDINATION OF CALTRANS PERMITS

Under this task the initial coordination for the Caltrans encroachment permit will be investigated. The initial coordination steps are described below.

7.1 Initial Coordination of Permit Process

The City of Sacramento will be the applicant for the design approval process. The encroachment permit fee will be paid by the City. Nolte will initially assist the City in acquiring verbal approval of the pre-design for this project from Caltrans, District 3 Encroachment Permit Office. The tasks may include:

1. Coordination with Caltrans.
2. Attending up to two meetings with the District.
3. Preparing conceptual exhibits.
4. Providing rough order of magnitude of cost of work within Caltrans right-of-way.
5. Prepare a letter or equivalent that establishes the project conditions required to allow a permit from Caltrans.

7.2 Traffic Control Concept

Traffic control concept will be developed for work on or near Caltrans right-of-way for purposes of discussing the project in a meeting with Caltrans. For traffic control concepts, Nolte will develop an outline for the Traffic Management Plan (TMP) for presentation to Caltrans. The actual TMP preparation is not part of this scope of services. Nolte will conduct a plans-in-hand field review with City and/or Caltrans staff to verify concerns. Caltrans comments and recommendations will be documented.

The 3rd Street sewer pipeline project will cross the I Street southbound on-ramp to Interstate 5, J Street near the northbound and southbound J Street off-ramps from Interstate 5, and L Street northbound on-ramp to Interstate 5. These intersections will require traffic control for shoulder/lane closures to install the deep trench system.

Based on a discussion with the Caltrans Inspector for this area, night work will be required. Night work is most likely to occur between the hours of 7:00 pm and 5:00 am. It may be possible to close up to two traffic lanes at a time with proper traffic control. Therefore, at J Street three or four construction stages are anticipated. At L Street, up to two construction stages may be needed. If standard steel plating is proposed to cover open trenches, the pavement will need to be notched to install the plates flush to the surface due to the heavy traffic. This concept assumes the use of standard temporary traffic control devices and cover options.

In addition to stage construction plans, eventually a TMP will be required by Caltrans. The extent of the TMP depends on the duration of construction activities on or near Caltrans right-of-way. It is assumed that construction activities within this area will be completed within two weeks, therefore the TMP may be limited to:

1. Advertising to public prior to beginning construction.
2. Advertising plan during construction.
3. Providing temporary signage.
4. Installing changeable message signs (CMS).
5. Providing an estimate of cost of work within Caltrans right-of-way.
6. Coordinating with District Operations and Traffic Management Team.

Detouring of traffic at these off-ramps is not allowed.

TASK 8 – SPECIAL ENGINEERING SERVICES

Where requested by the City, Nolte may provide Special Engineering Services as agreed to in writing. These services may include:

1. Records of survey/boundary survey.
2. Assessment of environmental characteristics involving hazardous or toxic substances.
3. Attendance at additional meetings not included in this scope of services.
4. Inspection services during construction.
5. Potholes beyond the number included in this scope of services.
6. Locating contractor lay down area.
7. Addressing transportation and permitting concerns.

8. Discussion of microtunneling alternatives. Note: Nolte does not anticipate the use or need for microtunneling in its preliminary assessment of the project, so this option is considered discretionary.
9. Traffic control concepts, plans, specifications, and estimates for work within City streets and not obstructing Caltrans right-of-ways. (It is assumed that the Contractor will provide the proper traffic control measures per City standards during construction. This scope of services only includes traffic control necessary for work within Caltrans right-of-way and affecting I-5 ramps.)
10. A TMP.
11. Right-of-way engineering.
12. Structural engineering for shoring, temporary trench covers, or other temporary facilities.

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 \$ \$249,971.
2. **Billable Rates.** CONSULTANT shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **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:

City of Sacramento
Department of Utilities
Engineering Services Division
1395 35th Ave. Sacramento, CA 95822
Ph (916) 808-1911 / Fax (916) 808-1497
Project No. 9284
Attn. Dale Mathison

- 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.

**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 City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, 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 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 defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate to any negligent act or omission, recklessness or willful misconduct of CONSULTANT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment, provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.
- B. Insurance Policies; Intellectual Property Claims. The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of 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." _____ (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.

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 City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by 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 City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$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 (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

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

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

The included employee benefits are:

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

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

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

You May . . .

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

City of Sacramento
Contract Services Unit
921 10th St., Room 402
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
921 10th St , Room 402
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.