

PROJECT #: 269534
PROJECT NAME: Valley Hi North Laguna Library
DEPARTMENT: Department of General Services
DIVISION: Facilities & Real Property Management

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

*Noll and Tam Architects
729 Heinz Avenue
Berkeley, CA 94710
Phone (510) 649-8295/ Fax (510) 649-3008*

("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

By: _____

Print name: _____

Title: _____

For: Ray Kerridge, City Manager

APPROVED TO AS FORM:



City Attorney

ATTEST:

City Clerk

Attachments

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

CONSULTANT:

Noll & Tam Architects
NAME OF FIRM

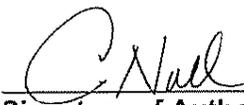
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Federal I.D. No.

396-4058
State I.D. No.

150086
City of Sacramento Business Op. Tax Cert. No.

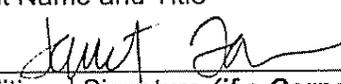
TYPE OF BUSINESS ENTITY (*check one*):

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



Signature of Authorized Person

Christopher Noll, CFO
Print Name and Title



Additional Signature (*if a Corporation*)

Janet Tam, CEO
Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Consultant: NOBIL & TAM ARCHITECTS

Address: 729 HEINE AVE., NO. 7, BERKELEY, CA 94710

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 "Ordinance").
3. Consultant understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

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

4. Consultant understands that Consultant will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Consultant will not be required to provide the benefit, nor shall it be deemed discriminatory, if Consultant requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Consultant is unable to provide a certain benefit, despite taking reasonable measures to do so, if Consultant provides the employee with a cash equivalent Consultant will not be deemed to be discriminating in the application of that benefit.
 - c. If Consultant provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Consultant provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Consultant submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date

after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City") Consultant understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Consultant takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Consultant to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Consultant cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Consultant provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Consultant understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Consultant understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Consultant to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Consultant understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Consultant further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Consultant also agrees to prominently display a poster informing each employee of these rights.
7. Consultant understands that Consultant has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Consultant agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Consultant.

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

C. Noll
Signature of Authorized Representative

12/21/06
Date

Christopher Noll
Print Name

CFD
Title

EXHIBIT A

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Jeff Blanton
5730 24th Street, Bldg 4
Sacramento, CA 95822
Phone (916) 808-8423/ Fax (916) 808-8337
Email: jblanton@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:

*Jefferey Day
Noll and Tam Architects
729 Heinz Avenue
Berkeley, CA 94710
Phone (510) 649-8295/ Fax (510) 649-300
Email: jeff@nollandtam.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 the scope of services.

Agreement Expires December 1, 2009

I. Project Description

The project involves design and construction support for a new public library located in Shasta Park near the intersection of Bruceville Road and Shasta Ave. The library will be approximately 20,000 sf and designed to coordinate with the building program and conceptual master plan completed by Group 4 Architecture.

The new library design will involve participation of the community and coordination with multiple agencies and stakeholders in the development of the design and coordination with the Master Plan for Shasta Park. Coordination with all interested participants and stakeholders will begin in the early stages of Schematic design and continue through design, bidding, construction, commissioning and completion of the project.

The project has limited funding. The design team will be required to develop alternatives and innovative solutions that will meet the program and operational needs of the library with a cost effective solution meeting all the stakeholders requirements within budget and schedule. The construction budget is limited to \$8 million plus library furniture, technology and construction escalation. The project is funded by bonds that require a deadline for completion. This project must be constructed, commissioned, furnished and opened to the public no later than April 15, 2009. Time is of the essence in completing all design and construction related activities on this project.

The consultant will be required during the first phase of the design services to develop options and alternatives in response to the project site, architectural program and budget. The consultant is responsible for developing value engineering alternatives throughout the project that meet functional and operational needs operational needs while conforming to all applicable industry guidelines and code requirements.

The project does not include design of the 20 acre Shasta Park development, but the library will be the first construction on site and the design will need to include installation of the infrastructure to support completion of the full project (i.e. water service, irrigation service, sewer, storm drain, electrical, telephone, fiber optics, fire sprinkler, natural gas, etc.).

II. Project Team

The project team shall include all firms listed below plus additional firms not listed below, but necessary to perform services as outlined in this agreement and jointly acceptable to both the City and Consultant.

<u>Firm</u>	<u>Representative</u>	<u>Service(s)</u>
1. Green Building Services	Richard Manning	LEED/Daylighting
2. Ingraham DeJesse	Steve DeJesse	Structural
3. Guttman & Blaevoet	Gurdaver Singh	M/E/P/T/S/Energy
4. Prussin Lighting Design	Alice Prussin	Lighting
5. HLA Group	Steve Canada	Landscape
6. JTS Engineering	Frank Walker	Civil
7. Silva Cost Consulting	Javier Silva	Cost Estimating
8. Matthew Williams Signage	Matthew Williams	Signage
9. Walsh Norris		Acoustics
10. _____	_____	_____

The Project Team shall include all firms listed above plus additional firms not listed but necessary to perform services as outlined in this agreement and jointly acceptable to both the City and Consultant. All firms listed above shall maintain fulltime offices with respective licensed professionals. Should any member of the Project Team fail to meet the requirements listed above the Consultant shall replace the firm with an alternative firm mutually acceptable to the Consultant and City at no additional cost to the City and without impacting the project schedule.

III. Project Phasing

Consultant shall provide to the City the basic services described in the following phases for the **Valley Hi / North Laguna Library**. Professional services shall include professional quality architectural, structural, mechanical, electrical off-site and on-site civil engineering, landscape design, interior design, lighting design, renewable resources design, energy efficiency design, , LEED design and evaluation ranking, on-going maintenance considerations, operations design considerations, furniture, fixtures and equipment (FF&E), security and surveillance systems, support and coordination for communications and networking services, and additional services as required to address the scope of the project. The project shall include all site areas within 100 ft. of the library, library support and parking associated with the library. The Project Construction Cost is set forth in Attachment 1 to Exhibit A, Article V.

Basic services covered under this Agreement shall include, but are not limited to: public workshops, public information meetings and presentations, staff meetings, architectural program validation, value engineering, conceptual design, cost estimating, all services required to prepare the design, obtain reviews and approvals, coordination with other agencies and organizations, prepare documentation for bidding, bid administration support, construction administration support, commissioning, and project closeout (including any warranty and claims related activities).

A. Schematic Design Phase

Upon receipt of a written Notice to Proceed with the Schematic Design Phase, the Consultant shall :

1. Based on the criteria set forth in this contract, consultant shall prepare a project schedule outlining all design, coordination, meetings, reviews, presentations, approvals and similar activities necessary to complete the project. The first draft of the schedule must be submitted within 30 days of receiving notice to proceed with this phase of the work. The schedule shall conform to review and meeting schedule requirements set by the City, Library and other agencies involved in the project. The schedule shall document in detail how the design, construction documents and permit process shall be completed within 270 calendar days. The schedule shall be developed using a software generated critical path in a format acceptable to the City of Sacramento. Consultant shall provide the City with electronic copies of the schedule and any changes proposed or accepted by the City.
2. Research and review all available project information.
3. Research past project history and commitments on the project site.
4. Complete site investigation of existing conditions.
5. Review and validate the building program.
6. Research utility services, commitments, resources and regulatory considerations that may impact the project.
7. Meet with City/Library staff, volunteers, community and industry representatives to discuss project objectives, operational needs, functional requirements and address potential problems or inconsistencies.
8. Meet with appropriate City departments to discuss code analysis summary / diagrams and plans with graphic layouts and impacts to the project design, including but not limited to; utilities, security, parking, daylighting, LEED compliance and landscape requirements. Consultant shall demonstrate that the design meets or exceeds program requirements. Consultant shall meet with other organizations and agencies (such as volunteers, SMUD, PG&E Pacific Telephone, AT&T, City communications, Regional Sewer & Sanitation, Utilities Department, etc.) as necessary for review of design issues. Consultant shall prepare a written report of discussions, open issues and any agreements/ conclusions.
9. Consultant shall prepare design alternatives with options and risk assessments for each alternative.
10. Consultant shall prepare preliminary site development plans, floor plans

and quality control standards for each alternative. Quantifying energy conservation measures and renewable resources criteria that will be used in development of the design and their impact on LEED compliance and Title 24 Energy Compliance (refer to Attachment 1 to Exhibit A, Articles IV.E & IV.J). Prepare computer simulations using EnergyPro or similar CEC certified performance software documenting design decisions and the impacts on operating cost and Title 24 compliance. Consultant shall coordinate operational assumptions and schedules with City staff. Simulations Preliminary Title 24 Performance Energy Calculations shall be provided for both actual working hours and operating conditions and compliance conditions as set forth in Attachment 1 to Exhibit A, Article IV.J.

11. Prepare description of alternatives, cost estimates and coordinate with the City's cost estimator.
12. Prepare recommendations on each alternative (minimum of three alternatives).
13. Based on comments from the City make required adjustments, modifications, and complete the final schematic design.
14. Prepare and submit for review by the City and other designated groups, Schematic Design Documents consisting of: Schematic Design Studies/Site Utilization Plans evaluating existing conditions, utilities, etc., functional and organizational user relationships, space requirements, operating procedures, how the design addresses maintenance by selection of materials and location of spaces, operating procedures, functional traffic flow, and how the design takes advantage of solar, wind, weather (summer/winter) and landscape considerations. Explanatory documents shall as a minimum include:
 - a. Site plan / utilities locations / transportation access / pedestrian access
 - b. Location and description of all off-site improvements needed or recommended for the project.
 - c. Floor plans / furniture / equipment layouts
 - d. Engineering plans for all disciplines / basic concept / general locations, sizes / recommendations and coordination
 - e. Roof plan / general equipment locations / access / screening
 - f. Solar impact on site and design, including impact from solar penetration into building.
 - e. Exterior Elevations / massing / daylighting / general materials
 - f. Drainage, grading, wind, and landscape concept and analysis
 - g. Outline specifications detailing materials, systems, assumptions and quality standards.
 - h. Preliminary LEED point scoring. (Refer to Attachment 1 to Exhibit A, Articles IV.E as a example).
 - i. Preliminary Title 24 Performance Calculations. (Refer to Attachment 1 to Exhibit A, Article IV.J).
 - j. Coordination of Art-In-Public-Places. (Refer to Attachment 1 to Exhibit A, Article IV.M).
 - k. Utility service path coordination and recommendations.

- I. Additional information and documentation needed to clarify project design and assumptions.
15. Provide original copies of all alternatives, recommendations, presentation graphics and supporting information.
16. Prepare information and supporting documentation necessary for the environmental review of the project.
17. Consultant shall develop and update a document outlining the basis for the design for review by the City, Library and other appropriate agencies on a monthly.
18. Submit one (1) reproducible set and five (5) copies of the above-mentioned Schematic Design Documents for review and approval and copies of all documents in electronic format acceptable to the City at Schematic Design LEED Review.

B. Design Development Phase

Upon receipt of written approval of the Schematic Design Phase Documents, and receipt of written notice to proceed with the Design Development Phase:

1. Prepare and submit for review by the City and other designated groups, Design Development Documents consisting of:

Site and floor plans, elevations or other mutually acceptable drawings, and descriptive specifications to identify and illustrate the size, extent and character of the Project in it's essentials as to materials, type of structure, mechanical, electrical and communication systems, data systems, landscaping, civil engineering, and other systems essential for the definition of the Project, including interface of systems. Explanatory documents shall as a minimum include:

- a. Site Plan/Civil Engineering Plans - dimensioned, graded, showing Design Development phase information, utility information, points of service, parking and landscape locations and connection to existing or new services. Confirmation of connection points with the appropriate utilities and agencies.
- b. Landscape Plan - showing size, type and location of materials and basic irrigation layout, controls location and irrigation coverage.
- c. Floor Plans - dimensioned, showing Design Development phase information, all material and color selections, furniture and fixture layouts, and methods of compliance with the requirements of the Americans with Disabilities Act (ADA). Include wall thicknesses, exiting analysis, code analysis and all code required separations. Identify daylight zones plus anticipated lumen levels, including solar impacts at 9:00 am, 12:00 pm, 3:00 pm and 6:00 pm solar time.
- d. Reflected Ceiling Plan - sufficient detail to indicate all lighting decisions, exposed ceiling mounted equipment, maintenance clearance requirements and daylighting elements.
- e. Roof Plan - showing all roof mounted equipment, screening, vents, daylighting elements and access.

Attachment 1 to Exhibit A

- f. Exterior Elevations - dimensioned, showing Design Development phase information, with all material and color selections.
- g. Typical building sections and all interior elevations necessary to illustrate design decisions and system coordination including all material and color selections, daylighting, energy compliance and LEED compliance (Refer to Attachment 1 to Exhibit A, Article IV.E).
- h. Preliminary Structural Framing and Foundation Plans - sufficient detail to indicate all structural decisions, material selections, quality, size, spacing anchorage and reinforcing.
- i. HVAC System selection, location, size, coordination, and load calculations for each room, space and zone, control recommendations, and equipment specifications and manufacturers cut sheets.
- j. Quantifying energy conservation measures and renewable resources criteria that will be used in development of the design and their impact on LEED compliance and Title 24 Energy Compliance. Prepare computer simulations using EnergyPro or similar CEC certified performance software documenting design decisions and the impacts on operating cost and Title 24 compliance. Consultant shall coordinate operational assumptions and schedules with City staff. Preliminary Title 24 Performance Energy Calculations shall be provided for both actual working hours and operating conditions and compliance conditions as set forth in Attachment 1 to Exhibit A, Articles IV.E & IV.J.
- k. Electrical Design and Location documents, load and lighting density calculations for each space and zone, control recommendations, energy saving options, and equipment specifications and manufacturers cut sheets.
- l. Communications/Data design and location documents, telephone, alarm, data, fiber optics, surveillance cameras, access control recommendations, equipment specifications and manufacturer cut sheets.
- m. Preliminary Specifications - in CSI 16b Divisions format with sufficient detail to indicate all decisions, including complete detail cut sheets of all specified equipment (with maintenance requirements) and materials.
- n. Drawings itemizing on-site and off-site development requirements.
- o. Design development binder indexing all manufacturers cut sheets and maintenance requirements on all equipment and significant materials and finishes.

2. Coordinate, support and incorporate the selected approach to Art-In-Public-Places into the overall project design.
3. Consultant shall prepare alternatives with options and risk assessments for each alternative. Develop preliminary site development plans, floor plans and quality control standards for each alternative. Quantifying energy conservation measures and renewable resources criteria that will be used in development of the design and their impact on LEED compliance and Title 24 Energy Compliance (Refer to Attachment 1 to Exhibit A, Articles IV.E & IV.J).
4. Prepare construction cost estimates and coordinate with the City's cost estimator to review intermediate and final cost estimates for the project.
5. Submit one (1) reproducible set and five (5) copies of the above-mentioned Design Development Documents for review and approval and copies of all documents in electronic format acceptable to the City at Design Development LEED Review..
6. Meet with staff during the Design Development phase and/or review period to discuss staff comments and address potential problems or inconsistencies.
7. Incorporate revisions to Design Development documents requested by the City, and resubmit one (1) reproducible set of Design Development documents for record approval.

C. Construction Documents Phase

Upon receipt of written approval of the Design Development Phase Documents, and receipt of written notice to proceed with the Construction Documents Phase:

1. Prepare and submit for review by the City and other designated groups, Construction Documents consisting of:

Working Drawings and the Project Manuals setting forth in complete and coordinated detail the requirements for the construction of the entire Project, including the necessary bidding information and special provisions of the contract forms. The City shall provide the General Conditions of the contract for coordination and inclusion. The Consultant shall verify all options and variables with the City prior to incorporation of General Conditions in the Project Manual. Documents shall as a minimum include:

- a. Cover sheet with names and phone numbers of each consultant, sheet index, vicinity map, and building code criteria.
- b. Demolition / Site clearance plans with verified existing condition plans.
- c. Civil Engineering Drawings, Calculations and Specifications.
- d. Architectural Drawings, Calculations and Specifications.
- e. Exit path diagrams.
- f. Floor Plan with color coding to identify fire separation assemblies and fire protection ratings for all openings.

Attachment 1 to Exhibit A

- e. Structural Engineering Drawings, Calculations and Specifications.
- f. Mechanical Engineering Drawings, Calculations and Specifications.
- g. Plumbing Engineering Drawings, Calculations and Specifications.
- h. Fire Sprinkler / Suppression / Alarm / Detection Drawings, Calculations and Specifications, including all manufacturers cut sheets to complete a full design for approval by the fire department. Differed submittal by successful contractor is not allowed.
- i. Electrical Engineering Drawings, Calculations and Specifications.
- j. Furniture, Fixtures and Equipment (FF &E) Design Drawings, Calculations, Specifications, and preparation of separate bid documents.
- k. Food Service Equipment Design Drawings, Calculations and Specifications.
- l. Communications Engineering Drawings, Calculations and Specifications and preparation of separate bid documents.
- p. Landscape Drawings, Calculations and Specifications.
- q. Carpet Seaming Plan Drawings and Specifications.
- r. Title 24 Energy Compliance Documentation – Performance Calculations conforming to Attachment 1 of Exhibit A, Articles IV.E and IV.J.
- s. Shop drawings as required for plancheck review and coordinated with the remainder of the contract documents.
- t. Art-In-Public-Places coordination documents with all necessary supporting documentation for engineering, plancheck, permit, construction and installation.
- u. Project specifications divided into the CSI 16 Division format, with list of required submittals and material testing. Provide a combined, single-document file of the text of all specification sections on computer-generated magnetic media in format acceptable to the City.
- v. Update the Design Development binder which includes all the detail cut-sheets (with maintenance requirements) of materials specified in construction documents broken down to conform to the CSI Divisions 2004 format for City use at final 100% construction document submittal.
- w. Consultant shall prepare a list of all submittals required from the contractor for completion of the project. The list shall be included in the bid package and require the contractor to identify the sub-contractor, scope of work & documentation, and review schedule as depicted in the contractors schedule.
- x. Provide a work plan and list of criteria for commissioning all building systems as part of the bid documents, including specific test requirements. Consultant shall be responsible for organizing and conducting all commissioning activities.
- y. Consultant shall coordinate all testing and commissioning and prepare all LEED certification documentation as described in

Attachment 1 to Exhibit A

- Attachment 1 to Exhibit A, Article IV.E.
- z. Consultant shall prepare an itemized directory of all Title 24 Acceptance Testing requirements. The directory shall clearly set forth all equipment, systems, conditions and materials that must be tested, the tests that must be performed, qualifications for the person(s) conducting the testing, documentation requirements, identify the person(s) responsible for conducting and documenting the test results, actions to take if an item fails a test, identify who must be present for the test, notification requirements for the test and all participants, qualifications for the "Testing Authority", responsibility for compiling, indexing and submitting acceptance test results to the building official. Responsibility for securing a permanent Occupancy Permit.
2. The following information shall be included in all sets submitted to the City for review and approval:
 - a. Completed structural calculations for all structural elements of the Project.
 - b. Completed mechanical, plumbing, fire sprinkler / suppression calculations / alarm.
 - c. Communications/signal/ data and electrical panel load calculations including load balancing.
 - d. Completed Title 24 Energy Compliance Performance Calculations, as required by the California Energy Commission.
 3. Fire Sprinkler / Suppression / Alarm / Detection Documents shall be completed with sufficient detail to meet fire department plancheck and approval. Documents under this heading shall include all specifications, calculations, manufacturers cut sheets and similar documentation with sufficient detail to secure the final permit acceptable to the Sacramento City Fire Department.
 4. Include all details, supports, engineering and drawings necessary to install, support and secure any and all artwork associated with the Art-In-Public-Places Program.
 5. Adjustments to the estimate of the "Fixed Project Construction Cost Estimate". The City may contract with an independent Cost Engineer to evaluate the Consultant's estimate. Where discrepancies occur between the two estimates the Consultant and the City's Project Manager will evaluate the differences and adopt a mutually acceptable value. Acceptance of the Cost Estimate by the City does not relieve the Consultant from responsibilities stipulated in Attachment 1 to Exhibit A, Article V.
 6. Provide drawings, specifications, calculations and support documentation for review and approval by Building Inspections Division. Make all necessary changes to secure required permits and approvals.

Attachment 1 to Exhibit A

7. Submit one (1) reproducible set and two (2) copies of the above mentioned Construction Documents for review and approval at 50%, and 100% completion along with all Title 24 energy calculations and LEED certification calculations described in Attachment 1 to Exhibit A, Articles IV.E & IV.J.
8. Meet with City staff during the Construction Document review period(s) to discuss staff comments and address potential problems or inconsistencies.
9. Provide additional clarification and/or coordination drawings when requested by City.

D. Bidding Phase

Upon receipt of written notice to proceed with the Bidding Phase consultant shall assist in obtaining bids and in awarding construction contract for the Project:

1. Furnish one (1) set of reproducible hardcopy of the approved Working Drawings, one (1) set of typed hardcopy of the approved Project Manual for printing and binding of bid documents. Documents shall be in a format acceptable to the City.
2. Furnish a copy of all Working Drawings and Project Manual in electronic format acceptable to the City.
3. Keep records and prepare necessary addenda and modifications, both written and in drawing form, for timely issuance prior to the bid opening date. All addenda shall be issued through the City's designated Project Manager.
4. Submit a dally log of all clarifications and phone conversations conducted by Consultant during the bid phase relating to this project. Provide the City with a typed list of all clarifications and addenda nine (9) calendar days before bids are due. Consultant shall not issue clarifications, interpretations or addenda or provide any other direction to bidders during this phase of the project. All clarifications, interpretations, revisions, directions, addenda or similar instruments must be issued and released by the City.
5. Prepare a bid evaluation sheet comparing all bids and addenda within 24 hrs. of the final bid.. Consult shall advise the City on bids submitted by Bidders for construction of the Project.
6. Revise Bidding documents for issuance as Construction Documents to incorporate addenda, and clarifications.

E. Construction Phase

After the City's award of a general contract for the construction of the Project, review the progress of construction to determine, in general, if the work is performed in accordance with the construction contract documents, and assist the City in the following manner:

1. Participate in a City coordinated Pre-Construction Conference between appropriate parties.
2. Furnish, on request, definitions, interpretations and clarification of the Contract Documents for the Project within five (5) working days of receipt of request by consultant.
3. Review and recommend approval or rejection of shop drawings, samples, and other submissions for conformance with the design concept of the Project and compliance with the Contract Documents. All review comments shall be supplied to the City's Project Manager within seven (7) calendar days of receipt by Consultant. The City's Project Manager may grant additional time for individual reviews on a case-by-case basis.
4. Perform general administration of the Project to review the progress and quality of work and at intervals appropriate to the stage of construction and as specifically required in the Contract Documents, but not less than once every two weeks. Notify the City's Project Manager at least one (1) working day prior to each site visit and submit written field observations to the City within two (2) working days of completing each site visit. The City's Project Manager may grant an extension for the submittal of written observations on a case-by-case basis.
5. Review the Contractor's applications for payment and recommend amounts owing, within seven (7) calendar days of receipt by Consultant.
6. Review and recommend approval or rejection of substitutions by the contractor for conformance with the project design concept and for compliance with Contract Documents. Consultant shall briefly review each substitution and provide the City's Project Manager with a fee and time schedule for detailed review of each substitution at no additional cost to the City. Time and cost for detailed review of substitutions shall be negotiated with Consultant on a case-by-case basis. Detailed review of each submittal cannot begin until authorized by the City's Project Manager. Detailed review of substitutions is subject to the requirements of Additional Services when approved and authorized by the City's Project Manager prior to beginning the detailed review.

7. Prepare all City initiated Change Orders, including the completion of all paperwork, details, plan revisions, calculations and all support documentation. Consultant shall be responsible for obtaining all necessary approvals, signatures, cost estimates and proposals for submittal to City.
8. Review for compliance, any items submitted by the contractor for consistency with the contract documents, including but not limited to submittals, O&M Manuals, written guarantees, instruction books, diagrams and charts, etc, within seven (7) calendar days of receipt.
9. Upon application for substantial completion by the contractor, recommend the date of substantial completion, and prepare and distribute a detailed punch-list of all deficiencies within 24 hrs. of the site visit. Verify punch-list completion prior to recommending final acceptance and payment.
10. Should Consultant become aware of omissions, substitutions, defects or deficiencies in the work of the project, Consultant shall immediately advise the City's Project Manager and follow-up in two calendar days with written confirmation of field conditions. Consultant is not contracted to complete extensive site investigation and field observations.
11. Assist during the post-construction warranty/guarantee period. Consultant shall not be responsible for post-construction guarantee assistance resulting from material or procedure changes to the Contract Documents made by City during construction and not approved by Consultant.
12. Review and evaluate the contractors commissioning plan, detailed schedule, commissioning results and reports provided by the contractor and/or independent testing entities. Attend and observe field tests and commissioning.

IV. Consultant Responsibilities

A. Design/Administrative Responsibility

The Consultant agrees to designate Jeffrey Day as the individual responsible for, and actively involved in, development of the architectural design for this Project. Consultant agrees that Jeffrey Day shall conduct and participate in required workshops, design charrettes, project meetings and similar activities .

B. Public Information Meetings/Design Presentations/Public Meetings

Consultant shall prepare, coordinate, participate in relevant informational meetings, presentations, coordination sessions, workshops, public meetings and similar activities for the project. Consultant shall be responsible for preparing meeting notes for all activities listed above and distributing copies of notes and a list of follow-up actions to all parties designated by the City.

C. Public Information Releases

Consultant, and all associated firms and/or individuals, shall not release information concerning this Project for public relations or promotional purposes without the specific written authorization of the City. This limitation shall not prohibit the consultant from referencing this Project in proposals developed by the Consultant to secure other contracts provided that the City is contacted in advance and approves such use and reference.

Upon request by the City, Consultant shall provide information necessary for the public information releases by the City.

D. Supporting Information Services

Consultant agrees to work with the City and develop, prepare and provide information requested by regulatory agencies, reviews, environment assessments and similar activities necessary to obtain required consensus, reviews and approvals for the project and related activities.

E. LEED Certification

Consultant shall secure the services of LEED certified professional to assist the City and Design team in evaluating options and alternatives for LEED certification. This project must achieve LEED Gold Certification or higher.

The design team shall follow the guidelines below for all work related to LEED activities related to this project:

Consultant shall work with the City to ensure that the project achieves the USGBC Gold Certification version 2.1 rating. A point "cushion" of at least 5 points is required when the project goes to bid.

Consultant shall develop and document a "Basis of Design" (BOD). The BOD shall include a discussion of building usage, operating hours, anticipated occupant loads on weekdays and weekends, building program as it directly impacts LEED certification, a section describing how each discipline is meeting the building program, including LEED compliance and structural, mechanical, lighting and electrical design calculations and objectives. Provide updated electronic and hard copy at each phase of the project through project completion, commissioning and occupancy.

Consultant shall enroll this project under SMUD's "Savings By Design" (SBD) program, and shall achieve a minimum energy savings of fifteen percent (15%) beyond what is required by 2005 Building Energy Efficiency Standards.

Attachment 1 to Exhibit A

Consultant shall provide the City with an electronic and hard copy of all computer models and simulation reports.

Consultant shall use City provided guide specifications (and/or mutually agreed to guide specifications from Consultant) in order to achieve the City's sustainability goals.

Specifications shall include, but not be limited to:

- Section 01350 - Special Environmental Requirements
- Section 01565 - Construction Waste Management Program
- Section 01810 - Commissioning

The City will hire a third party Commissioning Authority (CA) that shall be part of the design team from schematic design through building occupancy. The CA's scope with respect to the Consultant shall be as a reviewer. The CA should be invited to any appropriate design team meetings. Consultant shall schedule the CA's participation through the Project Manager. The City will pay CA fees.

The Consultant is free to achieve LEED Gold version 2.1 certification level in the most cost effective manner available except, that the following are required (if applicable):

1. Achieve a minimum of 1 point under Sustainable Sites, Credit 6 (Storm Water Management).
2. Achieve a minimum of 2 points under the Water Efficiency category.
3. Achieve a minimum of 7 points under the following Energy and Environment Credits:
 - a. Credit 1 – Energy Efficiency, and
 - b. Credit 3 – Additional Commissioning, and
 - c. Credit 5 – Measurement and Verification.
4. Achieve Materials and Resources Credit 2 (minimum 50% C&D Waste Diversion).
5. Achieve a minimum of 5 points under the following Indoor Environmental Quality Credits:
 - a. Credit 3 – IAQ Management Plans, and
 - b. Credit 4 -- Low Emitting Materials.
6. Achieve IEQ Credit 7.2 (Permanent Energy Monitoring System).
7. The City will pay the USGBC charges for LEED Registration and Certification, however the consultant is fully responsible for collecting and submitting materials to the USGBC.
8. Consultant will work with the USGBC to obtain the LEED Certification.

The Consultant shall perform all documentation of the LEED compliance process and provide an updated electronic copy of the score card and backup material to the Project Manager at the times noted below:

1. Schematic Design Review.
2. Design Development Review.
3. 50% Contract Document Review.
4. 100% Contract Document Review.
5. Following award of the project to the successful contractor.
6. At any time a construction change might impact the level of LEED certification.
7. At the completion of commissioning.

F. Separate City Consultants

The City may secure the services of multiple separate consultants throughout the duration of the project and this contract. Consultant shall meet, coordinate, provide supporting information and generally support the work efforts of these consultants in a timely and expeditious manner at no additional cost to the project.

G. Heating and Cooling Design Conditions

Heating and cooling design for this facility shall be based on ASHRAE design procedures. Consultant shall research, document and develop recommendations for temperature, humidity and ventilation parameters based on recommendations from ASHRAE, and regulatory agencies.

H. Incentives, Rebates and Tax Benefits

Consultant shall be responsible for reviewing the project scope and objectives with City staff and investigating the availability and impact of current or anticipated incentives and/or rebates for energy efficient design improvements available to the project. Consultant shall evaluate the operational and lifecycle impacts with City staff. Consultant shall prepare all documentation, calculations and supporting paperwork required to file for any incentives and/or rebates.

Rebates and incentives available to the owner or occupant shall remain the property of the City; however, incentives and tax benefits available to the design team shall remain the property of the design team in addition to compensation set forth in this agreement. The design team is responsible for all documentation, testing, certification and similar actions necessary to document qualifications for incentives and/or tax benefits for the design team. The City assumes no responsibility for loss of incentives or tax benefits to the design team due to actions by the City or the contractor(s).

Consultant may benefit from tax deductions stemming from the Federal Energy Policy Act of 2005 if Federal energy efficiency targets are achieved. Tax benefits of up to \$1.80 per square foot may be available to qualified designers. See http://www.energystar.gov/index.cfm?c=products.pr_tax_credits#8

J. Energy Efficient Design Requirements

Consultant is encouraged to develop energy efficient design options and alternatives for the design of the building, site and systems and maximize energy efficiency throughout the facility by addressing building design, shading, daylighting, site design, insulation, glazing, orientation, systems and similar criteria.

Consultant shall use the Performance Compliance computer simulation program approved by the California Energy Commission for use on non-residential projects. The program used shall be the latest version approved by the California Energy Commission and the program shall be capable of producing Life-Cycle-Cost analysis based on actual anticipated operating conditions.

Consultant shall prepare the following computer simulations for each phase of the design and contract documents for review by the City:

1. Consultant shall prepare energy savings recommendations for consideration by the City based on **actual operating conditions** and Life-Cycle-Cost simulations based on actual operating schedules and anticipated occupant loads and equipment operation.
2. Consultant shall develop options for consideration by the City that achieve a minimum energy savings of fifteen percent (15%) beyond allowable energy budgets established under Title 24 – Part 6 for Non-Residential Buildings. Each simulation shall included the simultaneous combined effects of the building envelope, indoor lighting, mechanical systems, and hot water systems.
3. Each option developed under J.2. above shall also include a separate computer simulation demonstrating a minimum energy savings of 5 percent (5%) beyond allowable energy budgets established under Title 24 – Part 6 for Non-Residential Buildings. Each simulation shall be limited to just the effect of the building envelope.
4. Consultant shall prepare separate Performance Compliance Calculations as described above during the schematic, design development, construction document and commissioning phases.

K. System Commissioning

Consultant shall coordinate with City staff, develop and prepare a facility-commissioning plan for the project to be included in the construction documents. The system-commissioning plan may include portions of the “2005 Title 24 Part 6 Acceptance Testing Requirements” but shall extend and incorporate all systems commissioning required for LEED Gold certification. Consultant shall prepare scope and scheduling for commissioning all systems designed by Consultant. Consultant shall participate in filed investigation, testing and development of

commissioning reports and results furnished by the contractor and provide City with recommendations. Consultant and City shall observe field tests necessary for system commissioning.

L. Furniture, Fixtures, Systems, Equipment

Consultant shall be responsible design and specification of all equipment, systems and furniture related to the project. Including items not permanently attached to the building. The contract documents shall provide details and specifications on all fixtures and furniture permanently attached to the building, including, but not limited to whiteboards, structural support for overhead projectors, cabinets, security systems, surveillance systems, etc. Contract documents shall include design, specification, bid documentation, coordination and support necessary for proper installation of all furniture, systems, and equipment.

M. Art-in-Public-Places

Consultant shall work with the Sacramento Metropolitan Arts Commission to incorporate and support integration of artwork within the project design beginning in the Schematic Design Phase.

N. Building Interior, Exterior and Site Signage

Consultant shall be responsible for design of all interior and exterior signage design, including specifications, bid instruments and documentation.

P. Building Maintenance, Operations, Servicing

Consultant shall meet with representatives from the City to determine how systems, spaces and access in the building will be facilitated for servicing and maintenance.

Q. Additional Clarification and Documentation

Consultant shall provide additional details, isometrics, sections, calculations and similar information when requested by City to clarify design and installation requirements and coordination on the project as part of the basic services under this agreement.

R. As-Built Documents

Consultant shall provide the City with all construction documents, including RFI's and field changes and similar documentation in electronic format and media acceptable to the City for the development of "As-Built Documents". Consultant is not required to prepare "As-Built Documents" under this agreement.

S. Information Format

Consultant shall provide all information developed for the project in an electronic format the City can readily use for reports, public notices, press releases, presentations and similar activities. The format shall be compatible with existing City software and resources.

T. Code / Regulatory Interpretation or Conflict

Where an interpretation, regulation, law or code conflicts with other interpretations, regulations, law or codes the design consultant shall follow the most stringent requirement.

U. Title 24 Access Conflicts with ADA

Where a conflict or apparent conflict occurs between Title 24 access requirements and requirements set forth under the Americans with Disabilities Act both requirements shall be met. Where the City agrees it is not necessary the design may include only the most restrictive requirement. interpretation.

V. PROJECT CONSTRUCTION COST

Project Construction Cost, as used in this Agreement, means the total cost to the City of all work designed or specified by the Consultant.

- A. Project Construction Cost shall include work covered by Change Orders (except where the Change Order is inconsistent with the current approved program for the Project or where the change is necessitated by conditions beyond the control of the Consultant, but **excluding the following**: cost of the site acquisition, City staff fees, and the cost of any rights of way.) Project Construction cost shall include all construction cost, systems, support, infrastructure, communications equipment, security equipment, furniture, fixtures, equipment, networking and related project cost necessary to complete the project, make the facility operational and address all items described in the architectural program.
- B. Consultant shall work closely with the City's designated cost estimator in development of all cost estimates, value engineering and tradeoff studies.
- C. Consultant shall prepare comprehensive construction cost estimates. City shall prepare updated project cost estimates as necessary.
- D. The "Preliminary Project Construction Cost" shall be the estimate of construction cost submitted to the City by the Consultant at the end of the Schematic Design Phase. Once the "Preliminary Project Construction Cost has been reviewed and approved by it shall become the "Fixed Project Construction Cost". Consultant agrees to complete all construction documentation within the "Fixed Project Construction Cost Estimate".
- E. The "Preliminary Project Construction Cost" and the "Fixed Project Construction Cost" estimates shall be based on the Construction Specification Institute (CSI) standard division format.
- F. Estimates shall include an appropriate design contingency adjusted for the level of detail available during each phase. The contingency must be approved by the City and shall be no less than fifteen percent (15%) at the Schematic Design

Phase, ten percent (10%) at the Design Development Phase, and 5% at the completion of the fifty percent (50%) Construction Document Phase and none at completion of the Construction Document Phase.

- G. All estimates shall list costs associated with the City's General Conditions. Specific attention shall be given to bonding, insurance and prevailing wage requirements. Consultant shall be responsible for obtaining a current copy of the City's General Conditions, and verifying all variables and options prior to completion of each estimate.
- H. The City reserves the right to increase the "Fixed Project Construction Cost Estimate", consistent with the consultant's submitted design, without increasing compensation under this Agreement.
- J. If the project, as designed, results in a low bid submitted by a responsible and qualified bidder which is more than the "Fixed Project Construction Cost Estimate" Consultant agrees, at no additional cost, and at the option of the City (1) to modify Working Drawings and Project Manual suitable for re-bidding the Project; or (2) to modify the Working Drawings and Project Manual and assist in negotiations with the responsible and qualified low bidder to reduce construction cost within the limit set by the "Fixed Project Construction Cost Estimate". The City may explore both methods with the Consultant, and the Consultant agrees to continue to render said services until the Project is designed within the limit of the "Fixed Project Construction Cost Estimate", at no additional cost to the City.
- K. The City, at its option, may agree to, and accept in writing, a low bid in excess of the "Fixed Project Construction Cost Estimate" specified above with no increase in compensation to the Consultant under this Agreement.
- L. Consultant shall assist the City by developing updated cost estimates and cashflow projections at various stages of the design, as requested by the City.

VI. MAJOR PROJECT CHANGE

- A. As used herein the term Major Project Change means: "A material and substantial change in the scope of work necessitated by conditions beyond the control of the Consultant and not resulting from errors, conflicts or omissions of the consultant". A change shall be deemed substantial only if it is significantly at variance with:

- 1. After approval of Schematic Design and associated construction Cost Estimates.

If a question arises over the determination of "significant variance", the City's Supervising Architect or Supervising Engineer shall render a binding determination on all parties.

- B. Services required due to a Major Project Change are Special Services and shall be governed by that provision of Exhibit B.

- C. No additional compensation shall be considered for minor changes which do not constitute a Major Project Change.

VII. PROJECT DESIGN AND CONSTRUCTION SCHEDULE

The Consultant shall review and determine that their work can be performed in conformance with the project schedule and as outlined below:

- A. The amount of time for completion of each phase of the work and City review periods shall, by incorporation in this agreement, be mutually acceptable and binding.
- B. The City will issue a Notice to Proceed on a phase-by-phase basis once the contract has been fully executed. By approving the full contract the City does not warrant or imply the full contract will be implemented.
- C. Consultant agrees to meet the mutually accepted deadlines for completion of their work by using whatever staffing strategies they may consider necessary. The City will not extend the completion dates without an acceptable explanation that the extension was completely unanticipated and beyond the control of the Consultant. The City will not consider any additional compensation for any consultant overtime, which the consultant may decide, is necessary to comply with the schedule.
- D. The City reserves the right to return all submissions from the design team, which are incomplete or inconsistent with the level of work required under the agreement without review, and provide no time extension. One week prior to a required submission of documents, the consultant shall meet with the City and present the "rough draft" of the submission, including copies of all available documents from the Consultant and all sub-consultants providing professional services under this Agreement. The Consultant shall be responsible for all costs associated with re-submission of a previously incomplete submittal, including, but not limited to: printing, delivery, travel, and extensions/revisions to the Consultants contract with his sub-consultants.
- E. The City reserves the right to withhold or modify payment to consultant if submittals are incomplete, delayed or inconsistent with project scope and schedule described in this agreement.
- F. Consultant shall review the project schedule monthly with the City and make adjustments as necessary and acceptable to the City. Changes to the schedule may not be made without the City's approval.
- G. The schedule shall be maintained by consultant in a format acceptable to the City, and made available for the City, in electronic format, when requested.
- H. The schedule shall include float to accommodate normal project adjustments

Attachment 1 to Exhibit A

typically encountered on similar projects. The City retains rights to ALL float time in the schedule.

- I. The schedule shall include time for all filings, processing and evaluation prior to any meetings or actions.
- J. Time is of the essence in the execution of this agreement.

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 **\$1,082,000.00 (One Million Eighty Two Thousand Dollars)**.
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.
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:

*Department of General Services
5730 24th Street, Bldg 4
Sacramento, CA 95822
Attn: Jeff Blanton*

- 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

Valley Hi North Laguna Library
Sacramento, California

FEE PROPOSAL
4 December, 2006

PROFESSIONAL FEE SUMMARY

<u>Phase / Task</u>	<u>Total Fee</u>
1. Schematic Design	\$133,468
2. Design Development	\$195,337
3. Construction Documents	\$451,102
4. Bidding	\$24,914
5. Construction Administration	\$252,180
TOTAL PROFESSIONAL FEE - Basic Services	\$1,057,000
6. Reimbursable Expense Allowance	\$25,000
TOTAL PROPOSED FEE	\$1,082,000

Basis of Proposal

1. Contract Scope of Work as described in Exhibit A, Consultant and Professional Services Agreement
2. Proposed Project Schedule, dated 9/22/06.

Not included in Fee Proposal:

1. Geotechnical report
2. Permit, utility, and other fees
3. Library Programming
4. Design of telecommunications, security, and audiovisual systems active equipment
5. Photovoltaic or emergency generator electrical systems
6. Services, products, and meetings not described in fee breakdowns attached.

Summary of Estimated Reimbursable Expenses (billed at cost)

1. Plotting and reproduction of progress drawings and specs for review
2. Perspective renderings and models (if any)
3. Fedex/messengers
4. Photocopying and faxes
5. Mileage, travel, and lodging
6. Consultant expenses for above items

Valley Hi North Laguna Library
 Sacramento, California
 FEE PROPOSAL
 4 December, 2006

FEE BREAKDOWN

Phase / Task	Total Fee
1. Schematic Design	
A. Noll & Tam Architects	\$63,515
B. Noll & Tam FF&E	\$0
C. Green Building Services, LEED Consult	\$11,550
D. Ingraham DeJesse, Structural	\$7,700
E. Guttman & Blaevoet, M/E/P/T/AV/S/Energy	\$21,340
F. Alice Prussin, Lighting	\$3,300
G. HLA Group. Landscape Architecture	\$3,300
H. JTS Engineering, Civil	\$17,263
I. Silva Consulting, Cost Estimating	\$4,950
J. Walsh Norris, Acoustics	\$550
K. Matthew Williams, Signage	\$0
Subtotal	\$133,468
2. Design Development	
A. Noll & Tam Architects	\$83,000
B. Noll & Tam FF&E	\$5,000
C. Green Building Services, LEED Consult	\$16,940
D. Ingraham DeJesse, Structural	\$12,100
E. Guttman & Blaevoet, M/E/P/T/AV/S/Energy	\$28,050
F. Alice Prussin, Lighting	\$7,700
G. HLA Group. Landscape Architecture	\$6,600
H. JTS Engineering, Civil	\$21,867
I. Silva Consulting, Cost Estimating	\$6,930
J. Walsh Norris, Acoustics	\$1,650
K. Matthew Williams, Signage	\$5,500
Subtotal	\$195,337

3. Construction Documents		
A. Noll & Tam Architects		\$222,500
B. Noll & Tam FF&E		\$25,000
C. Green Building Services, LEED Consult		\$5,500
D. Ingraham DeJesse, Structural		\$41,800
E. Guttman & Blaevoet, M/E/P/T/AV/S/Energy		\$52,910
F. Alice Prussin, Lighting		\$14,300
G. HLA Group. Landscape Architecture		\$18,700
H. JTS Engineering, Civil		\$43,222
I. Silva Consulting, Cost Estimating		\$7,920
J. Walsh Norris, Acoustics		\$2,750
K. Matthew Williams, Signage		\$16,500
Subtotal		\$451,102
4 Bidding		
A. Noll & Tam Architects		\$12,500
B. Noll & Tam FF&E		\$0
C. Green Building Services, LEED Consult		\$0
D. Ingraham DeJesse, Structural		\$1,980
E. Guttman & Blaevoet, M/E/P/T/AV/S/Energy		\$3,300
F. Alice Prussin, Lighting		\$1,100
G. HLA Group. Landscape Architecture		\$1,100
H. JTS Engineering, Civil		\$3,834
I. Silva Consulting, Cost Estimating		\$0
J. Walsh Norris, Acoustics		\$0
K. Matthew Williams, Signage		\$1,100
Subtotal		\$24,914
5. Construction Administration		
A. Noll & Tam Architects		\$156,200
B. Noll & Tam FF&E		\$6,000
C. Green Building Services, LEED Consult		\$18,480
D. Ingraham DeJesse, Structural		\$13,200
E. Guttman & Blaevoet, M/E/P/T/AV/S/Energy		\$33,000
F. Alice Prussin, Lighting		\$6,600
G. HLA Group. Landscape Architecture		\$3,300
H. JTS Engineering, Civil		\$11,000
I. Silva Consulting, Cost Estimating		\$0
J. Walsh Norris, Acoustics		\$0
K. Matthew Williams, Signage		\$4,400
Subtotal		\$252,180
TOTAL PROPOSED FEE		\$1,057,000

2007 SCHEDULE OF BILLING RATES
Noll & Tam Architects

Professional Billing Rates:

Principal	\$155 - \$175
Sr PM/ Project Architect	\$135
Project Manager	\$115 - \$120
Project Designer/Project Captain	\$110
Professional Staff	\$95
Drafter	\$75
Project Asst	\$60

Reimbursable Expenses

Reproduction, telephone, fax, travel outside the Bay Area, renderings, computer models, physical models, postage, messengers, and other usual expenses will be billed at cost.

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

CITY shall [*check one*] Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; [*list, if applicable*]

EXHIBIT D
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:

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." _____ (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 5 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:

X 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.

Policy Number: BK02200779

Owners, Lessees or Contractors (Form B)
ADDITIONAL INSURED

Change(s) Effective: 12/29/06

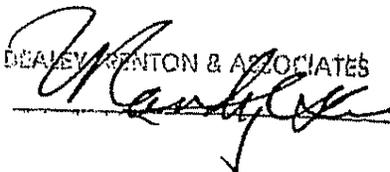
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. This endorsement modifies insurance policy under the following:

LIABILITY COVERAGE PART:

	Schedule
Name of Person or Organization:	
City of Sacramento	
Dept. of General Services/Facilities and	
Property Management-Jeff Blanton	
5730 24th St., Bldg #4	
Sacramento, CA 95822	

SECTION II - WHO IS AN INSURED is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

City of Sacramento, its Officials, Employees and Volunteers

DEALEY, RENTON & ASSOCIATES
BY 

POLICY NUMBER: BA02200778

BUSINESS AUTOMOBILE LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

DESIGNATED INSURED ENDORSEMENT (CA 20 48)

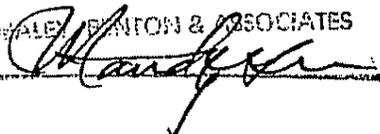
Name of Person(s) or Organization(s)

City of Sacramento
Dept. of General Services/Facilities and
Property Management-Jeff Blanton
5730 24th St., Bldg #4
Sacramento, CA 95822

BUSINESS AUTO COVERAGE

Each person or organization indicated above is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in SECTION II of the Coverage Form.

Schedule Cont.: City of Sacramento, Its Officials, Employees and Volunteers

DEALEY, BLANTON & ASSOCIATES
BY 

CA20 48 07 97