REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Staff Report
October 30, 2007

Honorable Mayor and
Members of the City Council

Title: Authorizing Appointment of Investment Banker and Financial Advisor Firms

Location/Council District: Citywide

Recommendation: Adopt a **resolution** authorizing the City Treasurer to execute a Professional Service Agreement with Stone & Youngberg LLC; Goldman, Sachs & Co.; Merrill Lynch, Pierce Fenner & Smith Incorporated; Sutter Securities Incorporated; and Siebert Brandford Shank & Co. to serve as investment bankers to the City for a term of five years.

Contact: Thomas P. Friery, City Treasurer, 808-5168; Thomas S. Berke, Assistant City Treasurer, 808-5168; Janelle Gray, Public Finance and Banking Manager, 808-8296

Presenters: Thomas P. Friery

Department: City Treasurer's Office

Division: Finance

Organization No: 0900

Description/Analysis

Issue: Over the past 20 years, the City Treasurer's Office has solicited proposals from firms interested in providing investment banking and financial advisor services to the City for a term of five years. After issuing a request for proposal (RFP) in August, the City Treasurer's Office received proposals from five individual firms as well as four team proposals, representing a total of 25 firms. This represents the strongest response received from any Investment Banking RFP.

After reviewing the proposals and conducting interviews, the Investment Banking RFP Selection Committee has recommended the team of Stone & Youngberg LLC; Goldman, Sachs & Co.; Merrill Lynch, Pierce Fenner & Smith Incorporated; Sutter Securities Incorporated; and Siebert Brandford Shank & Co. to provide the City with investment banking and financial advisor services during the next five years. The City Treasurer, after recusing himself from the Selection Committee, supports this decision and is asking City Council to approve the attached resolution authorizing the appointment of this team and execution of the related agreements.

Policy Considerations: This RFP process is consistent with past selection methods approved by City Council. The City Treasurer continues to recommend a five-year contract as prudent and appropriate to provide for continuity in meeting needs of the City's financing program while still providing the opportunity to periodically evaluate various changes in the industry (and within firms) that could improve the City's financing efficiency. The contract provides for termination and replacement of team members at the discretion of the City Treasurer.

Environmental Considerations: The City Council's action in adopting these resolutions is not a project for purposes of the California Environmental Quality Act.

Rationale for Recommendation: The approval of the attached resolution authorizes the City Treasurer to execute an agreement with Stone & Youngberg LLC, Goldman, Sachs & Co., Merrill Lynch, Pierce Fenner & Smith Incorporated, Sutter Securities Incorporated, and Siebert Brandford Shank & Co. to serve as investment bankers and financial advisors to the City for the next five years. After the reviewing the proposals and conducting interviews, the diverse, knowledgeable, and experienced Investment Banking RFP Selection Committee recommends the aforementioned team to best meet the needs of the City. The appointment of this team will aid in the continued growth and financial strength of the City. For detailed information on the selection process, see Attachment 1, page 4.

Financial Considerations: There are no budget impacts as a result of the appointment of investment banking and financial advisor firms. Compensation for services will be negotiated on a project-by-project basis at the time of each financing and will be contingent upon the sale of bonds, as the cost of such services is built into the financing structure.

Emerging Small Business Development (ESBD): The proposal process required all firms to submit a completed Emerging/Small Business Enterprise Certification. The proposal evaluation criteria also provided for a five percent preference for those teams that included qualified ESBE firms. Five of the 25 firms involved in the proposal submissions are certified by the City or the State of California as being a small or emerging-business enterprise. Those firms included Alta Vista Financial, Inc.; Backstrom McCarley Berry & Co.; Cabrera Capital Markets, LLC; Grigsby & Associates, Inc.; and Sutter Securities Inc. The recommended team includes Sutter Securities Inc., which will be given opportunities to participate in structure development and marketing of bonds.

Respectfully Submitted by: _____
for Janelle Gray
Public Finance & Banking Manager

Approved by: _____
Thomas S. Berke
Assistant City Treasurer

Recommendation Approved:

_____
Thomas P. Friery
City Treasurer

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Attachment 1

Background:

Introduction

Over the past 20 years, the City Treasurer's Office has solicited proposals from firms interested in providing investment banking and financial advisor services to the City for a term of approximately five years. This is the fifth time the City Treasurer's Office has gone through this process. The current team of investment bankers has been under contract with the City for six years, as a one-year extension was granted to their contract, per approval from City Council in June 2006.

The RFP encouraged investment banking firms to submit "team" proposals, as the City continually has a variety of financings and projects in the works and a team allows the City to take advantage of the combined financing expertise and distribution strengths of the various firms. Asking the firms to choose their teams also enables them to choose whom they would like to work with and combine efforts to put forth a diverse combination of strengths that best meets the needs of the City.

The objective of requesting proposals is to enable the City to identify its needs for the next five years and determine which firm or team of firms can meet these needs. The RFP process also allows the City to periodically evaluate various changes in the industry and the capabilities of firms to adapt to these changes. The City is involved in more types of financing projects than most other municipal issuers, including redevelopment projects, refundings, and land-secured bonds. A team allows the City to access specialty expertise in multiple areas.

A five-year period is preferred for various reasons. With the multitude of financings that are possible with such a large city, the City Treasurer's Office is not staffed to be issuing RFPs for each financing. Also, the City often has projects and financings that continue for months or years before going to market; the continuity of firms for these complex, long-term projects is a great benefit to the City. Additionally, the City issues multiple types of debt, similar to any large city; however, these transactions are generally more complex in structure with a relatively small issuance size, compared to the industry standard (average size over last five years was $114 million). A long-term contract is beneficial as it allows the City to attract the firms that best meet the City's needs, while providing continuity for long-term, more complex projects.

RFP Process

In the past 20 years the City has been in contract with four unique teams, representing 11 firms. Below are the past teams and years served:

City of Sacramento's Investment Banking Teams

1987 - 1991	1991 - 1996	1996 - 2001	2001 - 2007
Paine Webber	Stone & Youngberg	Merrill Lynch	Merrill Lynch
Stone & Youngberg	Donaldson, Lufkin & Jenrette Securities	Stone & Youngberg	Stone & Youngberg
	Grigsby Brandford Powell Inc.	E.J. De La Rosa & Co.	E. Wagner & Associates
	Merrill Lynch	Sutter Securities	Goldman, Sachs & Co.
			Siebert Brandford Shank & Co.

The RFP process for the next term began in August with the distribution of the RFP on August 23, 2007. The below events followed:

Event	Date
Distribution of RFP	August 23, 2007
Pre-Proposal Conference	September 7, 2007
Proposals Received	September 17, 2007
Interviews	October 1, 2007
Selection Notification	October 4, 2007
City Council Presentation	October 30, 2007
Contract Begins	Upon execution of all documents.

The RFP was sent out to approximately 38 investment banking and financial advisor firms, and over 75 firms viewed the RFP online using the Procurement Services Division's website. The RFP was also advertised in the Bond Buyer, an industry-wide daily paper. To allow the firms to have a forum in which to ask questions related to the RFP, the City Treasurer's Office held a Pre-Proposal Conference on September 7, 2007. This conference was attended by 15 individuals representing 12 firms. Additionally, the Pre-Proposal Conference was videotaped and made available on the City's website.

On September 17, 2007, the City received five proposals from individual firms and four team proposals in total representing 25 firms; the four team proposals represented 20 prominent investment-banking firms, listed below:

TEAM A	TEAM B
DEPFA First Albany Securities LLC Estrada Hinojosa & Co. Inc. First Southwest Company Lehman Brothers Inc. Loop Capital Markets, LLC Morgan Stanley & Co. Inc. Piper Jaffray & Co.	Bear, Stearns & Co. Inc. De La Rosa & Co. UBS AG

TEAM C	TEAM D
JP Morgan Chase & Co. Bank of America Securities LLC Backstrom McCarley Berry & Co, LLC Citigroup Global Markets Inc. RBC Capital Markets	Stone & Youngberg LLC Goldman, Sachs & Co. Merrill Lynch, Pierce Fenner & Smith Incorporated Sutter Securities Incorporated Siebert Brandford Shank & Co., LLC

The City's RFP process was two-phased. The first phase consisted of the submission of a detailed proposal in response to various questions and hypothetical exercises, as well as disclosure of professional qualifications. The second phase involved presentations to the Investment Banking RFP Selection Committee, which consisted of Thomas Berke, Assistant City Treasurer; Janelle Gray, Public Finance & Banking Manager; Russell Fehr, Finance Director; Satoshi Matsuda, Finance Director of SHRA; and David Taylor, CEO of David S. Taylor Interests.

During the first phase, members of the City Treasurer's Office reviewed and rated the proposals. Then After a review and rating of the proposals by members of the City Treasurer's Office, the entire Selection Committee met and determined that the four teams were most qualified to meet the various needs of the City, and the teams were invited to participate in the interview phase on October 1, 2007.

The evaluation criteria used by the Selection Committee in reviewing the written proposals conducting the oral interviews focused on five critical areas:

- Staff Qualifications & Experience
- Firm Experience
- Team Structure of Hypothetical Scenario
- Cost
- Other Factors

Additionally, a 5% preference was added for certified Emerging Small Business Enterprise firms.

At the conclusion of the oral interviews, the Selection Committee was virtually unanimous in concluding that the best team to provide investment banking services for the City for the next five years consists of the following firms: Stone & Youngberg LLC; Goldman, Sachs & Co.; Merrill Lynch, Pierce Fenner & Smith Incorporated; Sutter Securities Incorporated; and Siebert Brandford Shank & Co. Four out of five Selection Committee members ranked them first, and one member ranked them second.

The recommended team brings the financial strength and stability needed to effectively structure and market the City's financings, and it offers specialty expertise in redevelopment, land-secured financings, real estate, and arenas. The five firms also clearly demonstrated their ability to work as a team and explained how they intend to meet the direct and future needs of the City.

Additionally, the team's ability to meet the financial obligations of the City's financings is illustrated by a combined net excess capital of over $2.7 billion. While the City will have access to an entire range of services and expertise in the public-finance arena, a total of 36 professionals, with an average of 17 years of experience, will be specifically assigned to work directly on the City's financings needs.

The City will also have access to an extensive institutional and retail-marketing system. The marketing strength of the team is evident in its sales activity. Over the past three years, the firms sold nearly $630 billion of bonds nationwide. Further illustrating their capabilities and experience in the Sacramento market, during that time firms sold over $8.7 billion in secondary market bonds issued by local entities including the City, the County of Sacramento, Sacramento Municipal Utility District, and local school districts.

Once approved, each firm will enter into a professional services agreement that will state the terms and conditions under which the firms will perform. The basic terms of the agreement provide that the firms will assist the City in developing and implementing comprehensive financing plans for the preparation, execution, sale, and marketing of municipal bonds and other municipal securities for capital projects and other financing needs authorized by the City Council. The recommended firms have agreed to use their best efforts to bring the City's bonds to market at reasonable rates under existing conditions. A copy of the agreement in substantially final form is provided as Exhibit A to Attachment 2. During the course of negotiating the final form, any non-substantive changes or additions that may be necessary in the interests of the City will be reviewed and approved by the City Treasurer in consultation with the City Attorney's Office.

RESOLUTION NO.

Adopted by the Sacramento City Council

CONFIRMING THE CITY TREASURER'S RECOMMENDATION OF FIRMS TO SERVE AS INVESTMENT BANKERS AND FINANCIAL ADVISORS, AND AUTHORIZING THE CITY TREASURER TO ENTER INTO A FIVE-YEAR AGREEMENT WITH THOSE FIRMS

BACKGROUND:

A. The City Treasurer's Office occasionally desires to retain the services of an investment banker and financial advisor who can provide financial expertise and financial services needed to meet the City's diverse financing needs.

B. The City Treasurer's Office has solicited proposals from several firms well qualified to provide such financial expertise and financial services. Soliciting these proposals also enabled the City Treasurer's Office to evaluate various technological advances and procedural enhancements that could improve the City's financial efficiency.

C. Having reviewed the proposals received, and after considering the City's financing needs, the City Treasurer has selected a financing team. Given the need to maintain continuity on complex, long-term projects, the City Treasurer recommends that the City Council approve a five-year agreement with the team.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council hereby approves the City Treasurer's selection of a financing team consisting of Goldman, Sachs & Co.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Stone & Youngberg LLC; Siebert Brandford Shank & Co., LLC; and Sutter Securities Incorporated.

Section 2. The City Council hereby authorizes the City Treasurer, on the City's behalf, to enter into a five-year agreement with the financing team identified in section 1, under which the team members will provide the City Treasurer's Office with the desired financial expertise and financial services. The agreement is to be in the form attached to this resolution as **Exhibit A**, subject to the following: the City Treasurer may make non-substantive changes in the form with the approval of the City Attorney's Office.

PROJECT #: VARIOUS
PROJECT NAME: VARIOUS
DEPARTMENT: City Treasurer's Office
DIVISION: Public Finance

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

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

Stone & Youngberg LLC
One Ferry Building
San Francisco, CA 94111
415-445-2323

Goldman, Sachs & Co.
2121 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067
310-407-5886

Merrill Lynch, Pierce Fenner & Smith Incorporated
101 California Street, Suite 1225
San Francisco, CA 94111
415-676-3211

Sutter Securities Incorporated
555 California Street, Suite 3330
San Francisco, CA 94104
415-352-6350

Siebert Brandford Shank & Co., LLC
1999 Harrison Street, Suite 2720
Oakland, CA 94612
510-645-2245

CONTRACTOR agrees as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental

* **This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.**

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 CONTRACTOR 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 CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR 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 CONTRACTOR uses for billing clients similar to CITY.

3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

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 CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

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. CONTRACTOR 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 CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

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

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

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

TYPE OF BUSINESS ENTITY *(check one)*:

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

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

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

TYPE OF BUSINESS ENTITY *(check one)*:

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

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

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

TYPE OF BUSINESS ENTITY *(check one)*:

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

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

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

TYPE OF BUSINESS ENTITY *(check one)*:

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

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

CONTRACTOR:

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

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

TYPE OF BUSINESS ENTITY *(check one)*:

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

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor:

Stone & Youngberg LLC
One Ferry Building
San Francisco, CA 94111

Goldman, Sachs & Co.
2121 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067

Merrill Lynch, Pierce Fenner & Smith Incorporated
101 California Street, Suite 1225
San Francisco, CA 94111

Sutter Securities Incorporated
555 California Street, Suite 3330
San Francisco, CA 94104

Siebert Brandford Shank & Co., LLC
1999 Harrison Street, Suite 2720
Oakland, CA 94612

The above-named firms (each, a "Contractor") hereby declare and agree as follows:

1. Contractor 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, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").

3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:

   a. Bereavement Leave
   b. Disability, life, and other types of insurance
   c. Family medical leave
   d. Health benefits
   e. Membership or membership discounts
   f. Moving expenses
   g. Pension and retirement benefits
   h. Vacation
   i. Travel benefits
   j. Any other benefit offered to employees

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.

d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this 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. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.

5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this 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. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to 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. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

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

Stone & Youngberg LLC

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

Goldman, Sachs & Co.

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

SIGNATURES CONTINUED ON NEXT PAGE

Merrill Lynch, Pierce Fenner & Smith Incorporated

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

Sutter Securities Incorporated

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

Siebert Brandford Shank & Co., LLC

_____ _____

Signature of Authorized Representative Date

_____

Print Name

_____

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Janelle Gray, Public Finance & Banking Manager
915 I Street, HCH 3rd Floor, #0900, Sacramento, CA 95814
916-808-8296 (Ph.) / 916-808-5171 (Fax) / jgray@cityofsacramento.org

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

The CONTRACTOR Representatives for this Agreement are:

Scott Sollers, Managing Director
Stone & Youngberg LLC
One Ferry Building
San Francisco, CA 94111
415-445-2323

Tim Romer, Managing Director
Goldman, Sachs & Co.
2121 Avenue of the Stars, Suite 2600
Los Angeles, CA 90067
310-407-5886

Cheryl Hines, Director
Merrill Lynch, Pierce Fenner & Smith Incorporated
101 California Street, Suite 1225
San Francisco, CA 94111
415-676-3211

Ashford Wood, Senior Managing Director
Sutter Securities Incorporated
555 California Street, Suite 3330
San Francisco, CA 94104
415-352-6350

Peter Wong, Senior Vice President
Siebert Brandford Shank & Co., LLC
1999 Harrison Street, Suite 2720
Oakland, CA 94612
510-645-2245

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

2. **Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is __ is not _√_ required for this Agreement. If required, such coverage must be continued for at least _____ year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. **Conflict of Interest Requirements.**

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

(1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;

(2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and

(3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: ____ yes ____ no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

(1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";

(2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. Scope of Services.

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

5. Time of Performance.

The services described herein shall commence on December 1, 2007 and shall terminate December 31, 2012, unless sooner terminated as provided herein.

Scope of Services

Services required to be provided include, but are not limited to, the following:

1. Provide advice and recommendations related to the issuance of bonds and project specific financing programs.

2. Review the overall financial status of the City to determine resources available for the implementation and payment for each specific project.

3. Prepare all necessary reports and documents to support the issuance of debt such as cash flows analysis, debt service projections, substantiation of revenue estimates, verification of cash flows, and project or market feasibility, etc.

4. Identify appropriate level of public subsidy, including but not limited to assessment of project feasibility and credit worthiness of each recommended form of financing.

5. Analyze various financing options to achieve optimal leverage of City resources, while maintaining a prudent level of risk, through debt vehicles such as public / private partnerships, leases, refunding actions, pay-as-you-go vs. bond financing and the like. Such analyses will cover such issues as advantages and disadvantages of each financing option, risk analysis, legal constraints, etc.

6. Evaluate the potential expressions of interest for equity investment in the projects and assist in preparation of execution of documents if any such proposal is utilized.

7. Assist in the identification of potential equity investors for projects.

8. Identify the appropriate financing vehicle(s), including but not limited to, general obligation bonds, leases, short-term debt, project or system revenue bonds, certificates of participation, assessment bonds, special tax bonds (Mello-Roos), housing and tax increment bonds, or private developer participation where appropriate. Such debt may take the form of taxable or tax-exempt financing.

9. Prepare bond amortization schedules, provisions for redemption prior to maturity, call premiums, registration, investment procedures and other matters related to the structuring of bonds which may result in obtaining the lowest practical interest cost and the widest distribution of the bonds.

10. Obtain bond insurance, letters of credit, or any other type of credit enhancement deemed cost-effective for the transaction.

11. Assess the benefits of credit enhancements such as letters of credit, surety or bond insurance.

12. Prepare and distributing the preliminary and final Official Statements and other documents required to facilitate a successful bond sale.

13. Arrange meetings and preparing presentation materials for presentations to Moody's, Standard & Poor, and credit enhancement and surety reserve providers.

14. Review leases, agreements, construction contracts, insurance provisions, covenant requirements and all relevant legal documents and issues so as to provide the City with the greatest degree of flexibility compatible with sound financing and efficient financing procedures.

15. Analyze alternative bond structures or other form(s) of debt for specific projects so as to secure the lowest practical interest rate and, where appropriate, the widest competition for bond purchase, to include retail, institutional, private placement, etc.

16. Advise on the best bond structure to obtain the lowest interest rate (such as incorporation of a fixed rate, serial or term bonds or zero coupons).

17. Advise on maturity schedules, redemption features, and/or covenants to establish reserve funds, and on investment procedures or other matters deemed appropriate by the team, the City and/or bond counsel.

18. Develop a comprehensive marketing plan to reach a broad interest of potential investors to obtain the lowest possible cost of borrowing.

19. Administer the marketing and sale of the obligation.

20. Assist in the coordination of the bond closing.

21. Prepare a comprehensive "Final Pricing Book" within a reasonable time of the closing of each financing transaction that includes information requested by the City.

22. Provide continuing updates and advice on the impact of current or proposed state or federal legislation, and market conditions that could affect the financial plans of the City, arbitrage compliance of existing debt, and refunding opportunities.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** All compensation for services and expense reimbursement shall be contingent upon debt sale and shall be negotiated on a project-by-project basis, except that, on a project-by-project basis, the CITY may in its discretion pre-approve costs that will be paid by the City regardless if debt sale occurs. The CONTRACTOR shall set forth estimates of all costs and services for consideration by the CITY at the time of program development. Payment of reimbursable expenses shall be based on actual expenditures, subject to prior approval by the City.

   CITY shall pay directly or provide for reimbursement to the CONTRACTOR all permissible costs and expenses (upon prior CITY approval) in connection with issuance of the CITY bonds, including:

   a. Rating agency fees
   b. Credit enhancement fees
   c. Feasibility and market studies
   d. Appraisals
   e. Cost of validation and statistical services
   f. Costs of printing and distribution of the Preliminary Official Statement / Official Statement
   g. Notice of Sale and Resolution of Issuance
   h. Travel outside California approved in advance by the CITY
   i. Expenses of publication, advertising and investor tour and information meetings
   j. Disclosure counsel or Underwriter's counsel costs

   CITY shall pay or reimburse to CONTRACTOR any additional expenses incurred by CONTRACTOR on behalf of the CITY at the CITY'S specific request. Any expense incurred by CONTRACTOR for CITY employees or officials shall be reimbursed within 30 days of such expense.

   In the case of any bond sale, all fees shall be mutually agreed upon at the time of program development. Provided, however, that in no event will such total fees be greater than three percent (3%) of the bond issue, exclusive of costs of:

   a. Appraisals
   b. Credit enhancements
   c. Rating agency fees
   d. Trustee fees and Trustee counsel costs
   e. Preliminary Official Statement and Final Official Statement printing, mailing, including conversion and posting into electronic format
   f. Title policies
   g. Assessment engineering
   h. Special Tax consultant
   i. Bond Counsel

j. Disclosure or Underwriter's Counsel costs

The 3% maximum includes any management fee(s) and/or underwriter risk, but may include any takedown or Underwriter's counsel component of the underwriter discount. Takedown component(s) shall be negotiated separately at the time of program development.

CITY, at its sole discretion, may reimburse the Senior Manager and/or Co-Senior Manager (as designated by the CITY) for the Senior Manager's and/or Co-Senior Manager's out of pocket expenses incurred in development stages of financings.

If fees cannot be mutually agreed upon at the time of program development, the CITY shall have the right to engage other CONTRACTOR(s) who are not parties to this Agreement to provide the services called for in that particular program without any effect on this Agreement or any requirement that the CITY give notice of termination as set forth in Exhibit D, Section 8 herein incorporated.

By entering into this Agreement, each CONTRACTOR acknowledges and agrees that this Agreement does not provide any guarantee that any CONTRACTOR will receive compensation or expense reimbursement from the CITY. The parties agree that compensation or expense reimbursement shall occur only when the terms of compensation or expense reimbursement are agreed to by CITY on a project-by-project basis. The parties agree that compensation or expense reimbursement shall take place only out of proceeds of bond sales, unless otherwise expressly agreed to in writing by CITY on a project-by-project basis. Any expense incurred by CONTRACTOR for CITY employees or officials shall be reimbursed within 30 days of such expense. The parties agree that expense reimbursement will occur only when a CITY approved expense is incurred in accordance with this Section.

2. **CONTRACTOR'S Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

3. **Payments to CONTRACTOR.**

A. Payments to CONTRACTOR shall be made contingent upon debt sale and shall be made according to the usual and customary industry procedures and practices.

B. In the event the CONTRACTOR shall be compensated for Additional Services requested by the CITY that is outside the Scope of Services provided for in Exhibit A, compensation shall be mutually agreed to in writing between CONTRACTOR and CITY. Payment for Additional Services shall be as follows:

All invoices submitted by CONTRACTOR 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 CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

City Treasurer's Office
915 I Street, HCH 3rd Floor, #0900, Sacramento, CA 95814
Attn: Janelle Gray

916-808-8296 (Ph.) / 916-808-5171 (Fax) / jgray@cityofsacramento.org

4. Additional Services. Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a 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 contractors to perform said Additional Services.

5. Accounting Records of CONTRACTOR. During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR'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.

6. Taxes. CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall

_√_ Not furnish any facilities or equipment for this Agreement; or

____ furnish the following facilities or equipment for the Agreement;

EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. **Independent Contractor**.

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are

valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, 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. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

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

9. **Term; Suspension; Termination.**

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

(2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

10. Indemnity.

A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

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

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

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, 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 CONTRACTOR.

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

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

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

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

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

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

(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 under Exhibit A, Section 2.

B. Additional Insured Coverage

(1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

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

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

(2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

(1) Except for professional liability, CONTRACTOR'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 CONTRACTOR's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(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) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

(1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

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 . . .

O 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

O 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.