



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-00262

February 28, 2017

Consent Item 16

Title: Approval of Consultant Agreement and Transfer of Funds for Pavement Condition Data Collection and Analysis

Location: Citywide

Recommendation: Pass a Resolution: 1) authorizing the City Manager to execute a one-year Professional Services Agreement with Nichols Consulting Engineers (NCE) with two optional one-year extensions to perform pavement condition data collection and analysis for the City's Pavement Management System for an amount for the first year not to exceed \$120,000, and for all three years not to exceed \$360,000; and 2) transferring \$60,000 from Street/Bikeway Overlay & Seals FY17 CIP project (R15172000) to PMA Update Program FY2017 CIP project (R15170800).

Contact: Mark Brown, Program Analyst (916) 808-2273 Department of Public Works; Juan Montanez, Streets Manager, (916) 808-2254, Department of Public Works

Presenter: None

Attachments:

1-Description/Analysis

2-Resolution

3-Professional Services Agreement

Description/Analysis

Issue Detail: The Department of Public Works' Maintenance Services Division has an ongoing need to regularly update data regarding pavement conditions in order to accurately determine the schedule for resurfacing projects, pavement maintenance and upkeep of the City's roadways, and to develop a budget for such activities. Staff recommends a professional services agreement be executed with Nichols Consulting Engineers (NCE) to collect and update this data.

Policy Considerations: The recommendations in this report are in accordance with the provisions of City Code Chapter 3.64 and Administrative Policy 4102, Professional Services.

Environmental Considerations:

California Environmental Quality Act (CEQA): The subject of this report does not involve a project which may cause a direct or indirect change in the environment and is, therefore, exempt from CEQA, (Public Resources Code Section 21065).

Sustainability Considerations: The scope of work of this contract is consistent with the City's Master Plan goal M1.1 by collecting information that will assist in providing a longer lasting roadway surface and improving infrastructure reliability. Further, the data collected will help to reduce energy-intensive maintenance efforts by acquiring recommendations regarding use of sustainable pavement technology in resurfacing projects.

Commission/Committee Action: None.

Rationale for Recommendation: On December 2, 2016, Request for Proposals P17151621021 was issued for Pavement Condition Data Collection and Analysis. On January 9, 2017, the City received proposals from four consultants – Adhara Systems, Inc.; Infrastructure Management Services (IMS); Nichols Consulting Engineers (NCE); and Stantec Consulting Inc. The proposals were reviewed and evaluated by staff from the Department of Public Works. The reviewing panel determined that NCE had submitted the most responsive proposal, and was most qualified to complete the scope of work required by this project.

City Council approval is needed for the award of the consultant contract and for the transfer of funds to proceed with the project.

Financial Considerations: The professional services agreement with NCE will be funded from the PMA Update Program FY2017 capital improvement project (New Measure A Maintenance Fund, Fund 2026). As of January 31, 2017, the project has a total budget of

\$76,500. Staff anticipates an additional \$60,000 is needed for the professional services agreement with NCE.

Approval of the transfer of \$60,000 from the Street/Bikeway Overlay and Seals FY17 capital improvement project (R15172000, New Measure 'A' Maintenance Fund, Fund 2026) to R15170800 will bring the total budget to \$136,500 and the unobligated balance to \$125,250, which is sufficient to complete the data collection and analysis for FY2017. Extensions of the contract in succeeding fiscal years shall be subject to funding availability in the adopted budget for each fiscal year. Sufficient funding is available in the Street/Bikeway Overlay and Seals FY17 project to support the funds transfer.

There are no General Funds planned for these services.

Local Business Enterprise (LBE): NCE is not an LBE. The minimum LBE participation requirement was waived by the Director of Public Works. Staff conducted an extensive search within the local area and was unable to locate consultant firms that provide pavement condition data collection and analysis.

RESOLUTION NO. 2017-xxxx

Adopted by the Sacramento City Council

February 28, 2017

**APPROVAL OF CONSULTANT AGREEMENT AND TRANSFER OF FUNDS FOR
PAVEMENT CONDITION DATA COLLECTION AND ANALYSIS**

BACKGROUND

- A. The Pavement Condition Data Collection and Analysis Project (R15170800) will provide pavement distress data collection services on approximately 634 miles of streets and update the City's Pavement Management System.
- B. A Professional Services Agreement is needed for the data collection and consulting services associated with this project. City Council approval is needed for the award of the Professional Services Agreement and for the transfer of funds.
- C. City staff advertised a competitive proposal solicitation for consulting firms to perform pavement condition data collection and analysis of the data. Four proposals were received, and Nichols Consulting Engineers (NCE) was selected as the top ranked firm to provide the required services.
- D. Staff recommends that a Professional Services Agreement be awarded to NCE with two optional one-year extensions.

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

- Section 1. Approve the Professional Services Agreement with NCE for an amount for the first year not to exceed \$120,000 and for all three years not to exceed \$360,000.
- Section 2. The FY17/18 Capital Improvement Program is amended by transferring \$60,000 (Fund 2026) from Street/Bikeway Overlay & Seals FY17 CIP project (R15172000) to PMA Update Program FY2017 CIP project (R15170800).

PROJECT #:
PROJECT NAME: Pavement Condition Data Collection and Analysis
DEPARTMENT: Public Works
DIVISION: Maintenance Services

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

Nichols Consulting Engineers (NCE)
501 Canal Boulevard, Suite I
Richmond, CA 94804
510-215-3620

(“CONTRACTOR”), who agree 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 the 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 the 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 Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement 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 CONTRACTOR to perform 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.

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

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 those 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. **Additional Requirements for Surveying, Material Testing, and Inspection Services.** If this Agreement includes any land surveying, material testing, or inspection services provided for a City construction project, during the design, pre-construction, construction, or post-construction phases of the project, the Contractor and any subcontractor or subconsultant performing any such services shall comply with the provisions specified in Exhibit F.

7. **Authority.** The person signing this Agreement for CONTRACTOR 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.

8. **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.

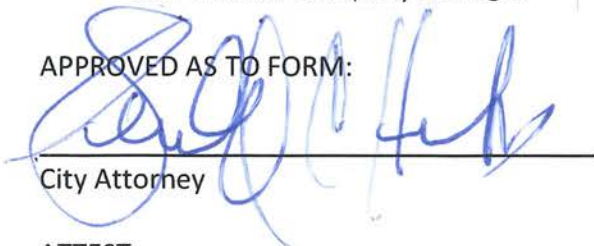
CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: Hector Barron

Title: Interim Director of Public Works
For: Howard Chan, City Manager

APPROVED AS TO 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
- Exhibit F Additional Requirements for Surveying, Material Testing, and Inspection Services

CONTRACTOR:

Nichols Consulting Engineers Chkd (NCE)

NAME OF FIRM

88.0254126

Federal I.D. No.

C1916885

State I.D. No.

137491

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

Greg Fasiano, Principal & Secretary
Print Name and Title

Additional Signature (if required)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: _____ Nichols Consulting Engineers (NCE) _____

Address: _____ 501 Canal Boulevard, Suite I; Richmond, CA 94804 _____

The above named Contractor (“Contractor”) hereby declares and agrees 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.



Signature of Authorized Representative

2-2-17

Date

Greg Fasiano

Print Name

Principal & Secretary

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Margot Yapp, Principal/Vice President
501 Canal Boulevard, Suite I
Richmond CA 94804
510-215-3620 / myapp@ncenet.com

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

The CONTRACTOR Representative for this Agreement is:

Mark Brown, Program Analyst
918 Del Paso Road, Building 1
Sacramento CA 95834
916-808-2273 / mxbrown@cityofsacramento.org

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address or e-mail 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. Insurance. Insurance requirements are specified in Exhibit D, Section 11.

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 X 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 be provided during the period, or in accordance with the schedule, set forth in the scope of services.

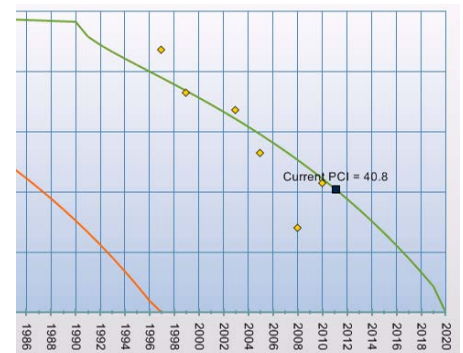
ATTACHMENT 1 TO EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

PROJECT UNDERSTANDING

NCE understands that the City of Sacramento (City) seeks a consultant to perform automated surveys of the street network in accordance with the distress definitions and descriptions as per ASTM D6433-11. In addition, all collected data will be entered into the City's StreetSaver® database and analyzed to generate pavement condition indices (PCI) and reports.

Although Measure B narrowly failed in November 2016, finding new transportation revenues will continue to be a high priority for policy makers both locally and statewide. Public accountability will be critical so that voters can see and understand that these new revenues are being spent in the most cost-effective manner, and that performance measures are instituted. One such measure is the PCI which is reported periodically to elected officials and/or the public.

Therefore, it is vital that the pavement condition data be accurate and that it be closely calibrated with the performance prediction models in StreetSaver®. For example, the graph shown to the right is an example where variations in the field data collected may result in different predictions of the future PCI. Obviously, this is not a desirable outcome for the City.



Although not requested in the RFP, NCE can also assist with other optional tasks such as:

- Development of sustainable maintenance and rehabilitation strategies for inclusion in the decision tree
- Funding or budgetary analysis
- Development of multi-year work plans
- Linking GIS to StreetSaver® database
- Preparation of graphs and exhibits for presentations to elected officials
- Integration with other asset management systems such as curb ramps and utilities
- Collection of other assets such as markings, signs, curb and gutters, sidewalks, etc.

As described in the previous section, NCE is extremely experienced with StreetSaver® pavement condition surveys, as well as with the all aspects of the program. We will also be able to assist in recommending or implementing new paving technologies that will not just meet the PCI requirements, but also the City's sustainability and environmental goals. Our extensive working knowledge of StreetSaver® and the City's street network will be of tremendous benefit to the City, and allow NCE to execute this project quickly and efficiently.

SCOPE OF WORK

The following is a description of NCE's overall approach to this project.

TASK 1 – KICKOFF MEETING

NCE will first meet with City staff to kick-off the project by reviewing the technical approach and any administrative matters that may be necessary. At a minimum, items to be discussed will include the following:

- Scope of work, project schedule, budget and invoicing requirements
- Field work
 - Scheduling and access requirements for field work
 - Public safety concerns, requirements and procedures

- Quality Control Plan (QCP)
- Potential validation of inventory data
- List of publicly maintained streets (as well as privately owned)
- Other optional tasks
 - Maintenance and rehabilitation (M&R) practices, records and costs
 - Paving or maintenance budgets
 - GIS shapefiles/linkage
 - Presentations to Board of Supervisors

Prior to the kickoff meeting, NCE will prepare a detailed agenda which will be sent to City staff for review prior to the meeting. Additional meetings will be held with City staff at appropriate milestones to review the work performed and to address any questions or issues that arise as the work progresses.

Deliverable:

- Agenda and summary of meetings

TASK 2 – PAVEMENT CONDITION SURVEYS

As part of this task, NCE will review the database inventory to consider elements such as streets that are identified as part of the National Highway System (NHS). The FHWA is proposing new performance measures on all pavements in the NHS such as International Roughness Index (IRI). If this rule is adopted, all streets listed on the NHS will be subject to additional data requirements. NCE recommends that any routes on the NHS be identified in the StreetSaver® database if this has not yet been performed.

NCE will next perform pavement condition surveys on approximately 634 miles of pavement, i.e., 238 miles of arterials and 396 miles of other road classes. The “fuel” for any pavement management engine is the surface condition data. Pavement distress provides that important set of data in determining the costs to maintain the pavement network.

We have seen considerable advancements in technology over the last ten years. The assessment of pavement condition has seen a transformation from more labor intensive manual efforts to high-speed automated surveys that combine the use of roadway sensors and digital imagery. Our team is well positioned to collect, measure and map all pavement condition data using a sophisticated automated approach using LiDAR & pavement laser scanners. Our goal is to provide accurate, repeatable and economical pavement condition assessments.

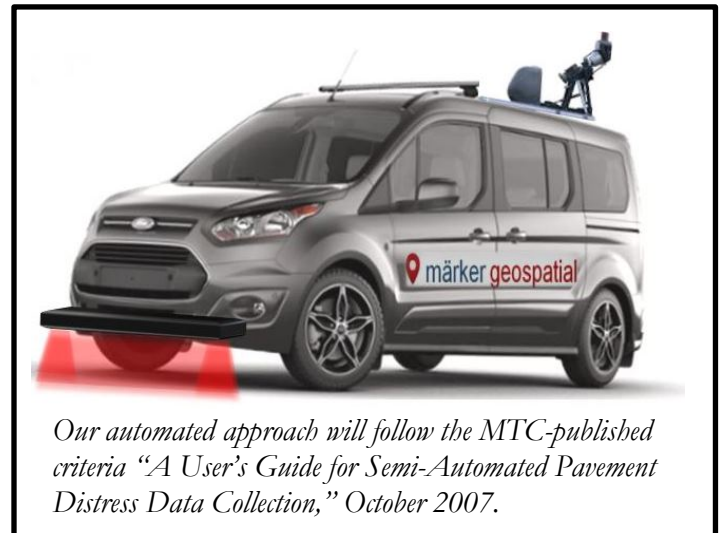
Our mobile data collection equipment and team are capable of collecting (only the first two bullets will be collected in this project):

- Pavement Surface Distress
- Pavement Profiling (Roughness / Rutting / Macrotexture)
- Positioning Spatial GPS & Linear Referencing
- 360 Right-of-way Digital Imagery and 3D LiDAR Point Cloud Data
- Mobile Collection Roadway / Roadside Asset Inventories
- Sign/Pavement Marking Reflectivity
- Roadway Cross Slope / Grade and Curvature

These are described in more detail in the paragraphs below.

ROADWAY COLLECTION VEHICLE SYSTEM OVERVIEW

During our roadway inspections, pavement profiling (ride quality, rutting, macrotexture), GPS, and surface distress data is collected continuously and seamlessly by our pavement technician team using our automated data collection vehicle which makes available a wide range of survey technologies. Our pavement distress data collection process involves the use of 3D digital imaging technology along with customized, integrated keyboards, Laser and LiDAR scanning which are all used by to collect the type, severity, extent, start and stop points of all the ASTM Standard D 6433 -11 or StreetSaver® pavement surface distresses.



Examples of Asphalt Concrete (AC) distresses are shown on the graphic below.



NCE is a MTC certified firm with inspectors that have successfully passed a rigorous field and online test. NCE has over 20 years of experience utilizing and training staff on the StreetSaver® program.

NCE will be responsible for providing all equipment necessary to perform this task. Should City personnel wish to observe NCE's crews during the surveys, we will be more than happy to accommodate them.

Note that this scope of work and condition surveys do not address issues including, but not limited to traffic, safety and road hazards, geometric issues, road shoulders, sidewalks, curb and gutters, drainage issues or short term maintenance that should be performed.

Deliverable:

- Draft and final QC plan
- Pavement distress data

TASK 3 – UPDATE STREETSAVER DATABASE & REPORTS

All data collected from the condition surveys in Task 2 will then be downloaded into the StreetSaver database. There are specific rules and validations that must be followed in this task, so a successful upload is dependent on appropriate QC as well as a solid familiarity with the StreetSaver program.

As noted previously, NCE's engineers have worked with the StreetSaver program for more than 20 years; our familiarity with the program is unmatched, and the City can be assured of a swift and accurate data upload. This is particularly important as the data collected in Task 2 forms the foundation for accurate, realistic and credible future funding projections.

This task will be performed at NCE's office in order to provide Quality Control of all data entered into the system. NCE will then perform the pavement condition index (PCI) calculations, and correct any errors found.

Finally, all PCI, database statistics and other reports will be prepared and will include the following:

- Pavement distribution by Council District (by area, lane-miles, centerline miles and % area)
- Pavement distribution by Functional Class (by area, lane-miles, centerline miles and % area)
- PCI less than 40 (by area, lane-miles, centerline miles and % area)
- PCI by Functional Class (weighted by lane-length)
- Length differences - this report will identify any segment where the length difference between the City supplied segment length and the actual measured segment length differs by more than ± 50 feet.
- List of streets that were not tested - this will include the street name, begin and ending limits, section ID, and reason for not testing, e.g., closed, under construction, etc.

Deliverables:

- Updated StreetSaver database with pavement distress data
- PCI, database statistics and other reports (1 electronic and 2 electronic copies)

TASK 4 – MAINTENANCE AND REHABILITATION STRATEGIES

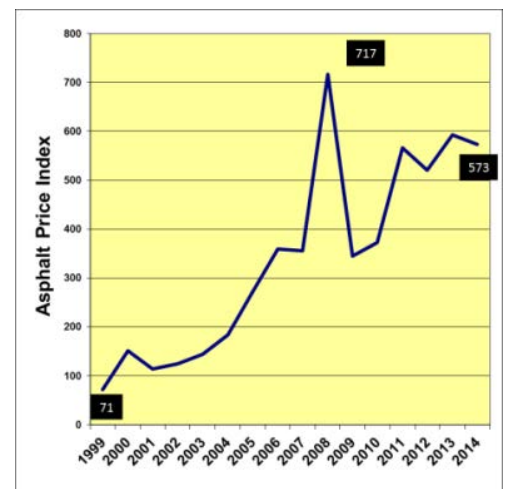
NCE will review maintenance and rehabilitation (M&R) strategies with City staff. This will include the recommendation and selection of appropriate treatments and the determination of treatment unit costs. This will also be an appropriate time to review the use of new/sustainable treatments or materials, such as PCC bonded overlays, rubberized asphalt, rubberized cape seals, microsurfacing, rejuvenators, cold-in-place recycling, full depth reclamation, warm mix asphalt, strategies for composite pavements, etc.

NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the City with solutions that are innovative, sustainable, practical, and workable. For example, we recently worked with Chula Vista to develop strategies for implementing "cool pavements".

Development of the M&R decision tree is a critical step in any pavement management update as it has a direct and significant impact on the final work plan that is developed, as well as the budgeting consequences. NCE's experience in pavement engineering and design with the City of Sacramento allow our staff to be able to provide solutions that are practical and workable.

Since paving construction costs have increased dramatically since 2004 (as much as three times in some cases), NCE strongly recommends that this be performed prior to any budget analyses. The chart illustrates the volatility in asphalt price index as monitored by Caltrans.

The unit costs will have a huge impact on the City's projections or needs assessments. Therefore, NCE will review any recent bid tabs, together



with those from neighboring cities, as appropriate. Also, unit prices will be fully-loaded rates, and will include not just contractors' prices, but also design, inspection and testing costs.

TASK 5 – BUDGETARY ANALYSES & FINAL REPORTS

NCE will next perform a **Budget Needs** analysis using an analysis period to be determined by the City (can be as long as 30 years). This will identify M&R requirements for each street section and determines the total maintenance and rehabilitation requirements over the entire analysis period. The Needs Analysis identifies road sections that need treatment and applies the M&R decision trees to each section. The costs are then summed for the entire period. This forms the basis for performing Budget Scenario evaluations, which optimize the street sections for repair under constrained budgets.

In simple terms, the Budget Needs analysis answers the questions: “If I have unlimited funding for street maintenance and repair, which streets should I fix? When should I fix them? What treatments should I apply? How much will it cost?”

The **Budget Scenarios** evaluation prioritizes sections for repair under constrained, realistic, budgetary assumptions.

Simply put, this module answers the question: “If I only have limited funds for street maintenance and repair, which streets have the highest priority for repairs, when should I perform the repairs, and how much will it cost?”

Although the RFP requires only one scenario (i.e., funding level to maintain PCI of 75), NCE can, if desired, perform multiple budget or target-driven scenarios after discussion with City staff. Examples of typical scenarios include:

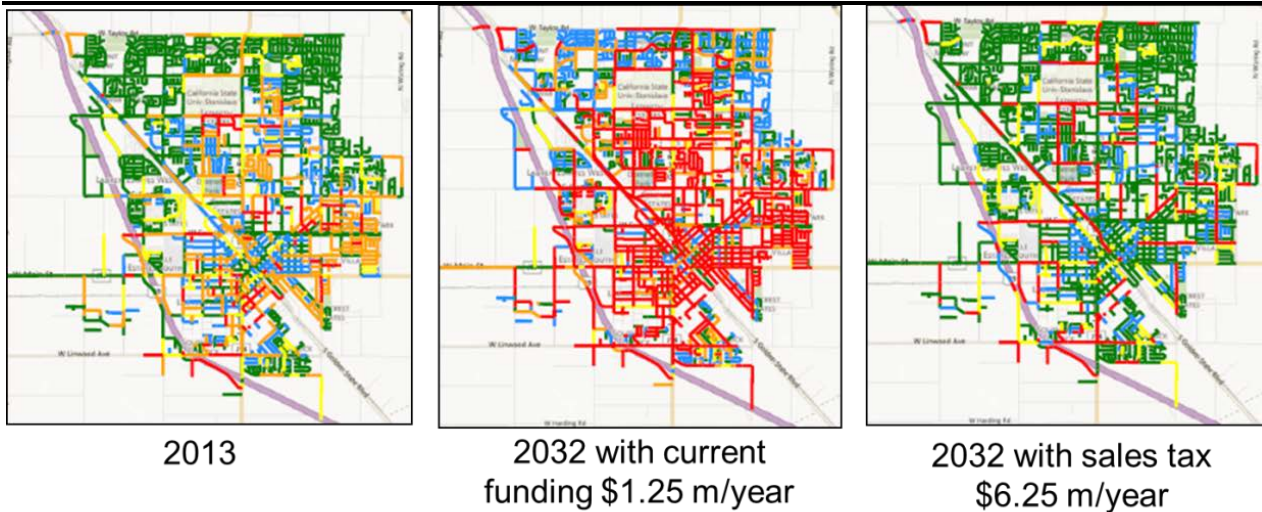
- Evenly distributed funding needs to reach a state of good repair
- Impacts of existing funding levels or projected revenues based on historical trends
- Impacts to model drops in funding, e.g., the gas tax is expected to drop in FY 2016/17
- Impacts if there are increases in funding levels, e.g., bond measures, sales taxes, legislative proposals;
- Funding required to maintain certain PCI levels
- Funding to improve the PCI

GIS MAPS

If desired, NCE will produce GIS maps to illustrate the results of the analysis. Built-in queries are available within StreetSaver to generate maps or export to shape files such as:

- PCI Range by street section
- Future PCI by street section
- Maintenance Treatment History
- Impacts of different budget scenarios
- Sections Selected for Treatment

Once linked, powerful maps can be generated within minutes, as shown in the example below:



This assumes that the City's road centerline shapefiles has already been linked to the StreetSaver database.

Upon completion of the analyses, NCE will prepare a draft report for the City to review. The report will contain, at a minimum, the following information:

- Executive Summary (suitable for a non-technical audience)
- Study Objectives
- Description of methodology
- Inventory of all roads
- Current pavement conditions for all road classes
- Projected PCI under existing funding levels over the next five years for all road classes
- Projected annual repair/rehabilitation programs for road maintenance for a multi-year period
- Multi-year plan for road maintenance, resurfacing, rehabilitation and reconstruction
- Impact of deferred maintenance (backlog) on the overall network condition
- Recommended funding scenario
- Recommended pavement strategies
- GIS maps to show impacts of scenarios

NCE will deliver the draft report to the City for review in electronic format. Upon receipt of comments on the draft report, NCE will complete the final report for submittal.

Deliverables:

- Draft report (electronic)
- Final report (1 electronic copy, 3 hard copies)

TASK 6 – TRAINING, TECHNICAL SUPPORT & PRESENTATIONS *(Optional)*

As an optional task, NCE will prepare and present one 6-hour training class. The class will cover basic StreetSaver software operations, including how to access the program and setup various user accounts, and an overview of the features available. Areas to be covered will include:

- Creating or editing street sections
- Entering maintenance and rehabilitation treatments

- Revising the M&R decision tree
 - Identifying treatment strategies
 - Determining appropriate unit costs
- Creating budget scenarios
 - Project selection tools
 - Target-driven analysis
 - Needs analysis
- Generating reports
 - Pre-defined reports
 - Budgetary reports
 - Custom reporting tool
- GIS Maps



All materials will be provided by NCE. It is assumed that the training will be conducted on-site and will include up to 4 City staff members. It is assumed that computers will be provided by the City as well as internet access.

NCE has prepared and trained over 150 agencies in California on the StreetSaver software. This includes developing all the training materials, ensuring interaction in the training as well as conducting the training. Training courses we have developed include Basic Computer Skills, Budgetary Analyses, How to be a Champion, GIS Linkage, Custom Report Wizard, and Project Selection. We are MTC's selected consultant to provide this training. At the end of the training, City staff will be able to perform additional funding scenarios as desired, and generate new or revise the seven-year prioritization plans.

In addition, NCE will provide up as-needed, on-call technical support to address any questions that the City may have. This may include troubleshooting, preparing custom reports or analysis, or making presentations.

Finally, NCE will prepare and deliver presentations to City staff or to Council as desired. This may be short 15 minute presentations to longer, workshop type presentations as desired.

No work on this task will commence without written authorization by the City.

Deliverables:

- Training manuals for City staff
- Technical support
- PowerPoint presentations

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR 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 \$ 120,000.

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

3. **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.

4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR 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 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 above.

D. Requests for payment shall be sent to:

(1) **Email.** Submit email invoices and any attachments to:

apinvoices@cityofsacramento.org

(2) **Postal mail.** If emailing invoices and attachments is not an option, mail to:

A/P PROCESSING CENTER
CITY OF SACRAMENTO
915 I ST FL 4
SACRAMENTO CA 95814-2608

5. **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.
6. **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.
7. **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.

ATTACHMENT 1 TO EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT
FEE SCHEDULE / MANNER OF PAYMENT

NCE Cost Estimate

The following table is NCE's cost proposal for the project.

LABOR COSTS																
PROJECT STAFF	ROLE IN PROJECT	Hourly Rate (\$/hr)	Task 1 Kickoff Meeting		Task 2 Pavement Condition Surveys		Task 3 Data Entry/PCI		Task 4 M&R Strategies		Task 5 Budgetary Analysis & Final Reports		Task 6 Training & Technical Support		TOTALS	
			Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	HOURS	COST
Margot Yapp	Project Manager	87.84	8	\$ 703	8	\$ 703	2	\$ 176	6	\$ 527	8	\$ 703	40	\$ 3,514	72	\$ 6,326
James Signore	QC Manager	63.09		\$ -	8	\$ 505		\$ -	6	\$ 379		\$ -		\$ -	14	\$ 884
Mei Hui Lee	Project Engineer	40.38	8	\$ 323	32	\$ 1,292	32	\$ 1,292	16	\$ 646	40	\$ 1,615	40	\$ 1,615	168	\$ 6,783
David Bivins	Senior Technician	29.62		\$ -	160	\$ 4,739		\$ -		\$ -		\$ -		\$ -	160	\$ 4,739
Marvin Mann	Field Technician	20.02		\$ -	24	\$ 480		\$ -		\$ -		\$ -		\$ -	24	\$ 480
Tina Epper	Administrative	21.63		\$ -		\$ -		\$ -		\$ -	8	\$ 173	4	\$ 87	12	\$ 260
Estimated Total Direct Labor Hours/Costs			16	\$ 1,026	232	\$ 7,719	34	\$ 1,468	28	\$ 1,552	56	\$ 2,491	84	\$ 5,216	450	\$ 19,472
OVERHEAD COST (190.0% Of Direct Labor)				\$ 1,949		\$ 14,666		\$ 2,789		\$ 2,949		\$ 4,733		\$ 9,910		\$ 36,996
DIRECT COSTS																
Travel				\$ 123		\$ 6,795		\$ -		\$ 123		\$ 369		\$ 369		\$ 7,780
Reproduction & Supplies				\$ 100		\$ 460		\$ 100		\$ 100		\$ 500		\$ 1,098		\$ 2,358
Marker Geospatial (see attached for detailed breakdown)						\$ 42,485										
TOTAL ESTIMATED DIRECT COSTS				\$ 223		\$ 49,741		\$ 100		\$ 223		\$ 869		\$ 1,467		\$ 10,138
TOTAL LABOR, OVERHEAD AND DIRECT COSTS				\$ 3,198		\$ 72,126		\$ 4,357		\$ 4,724		\$ 8,093		\$ 16,593		\$ 109,091
FIXED FEE 10%				\$ 320		\$ 7,213		\$ 436		\$ 472		\$ 809		\$ 1,659		\$ 10,909
TOTAL COSTS BY TASK				\$ 3,518		\$ 79,338		\$ 4,793		\$ 5,196		\$ 8,902		\$ 18,252		\$ 120,000

Assumptions

Task 1 assumes 1 meeting in Sacramento.

Task 2 assumes 634 miles and includes distress condition survey training for City staff at no additional costs.

Task 4 includes one meeting to discuss M&R strategies.

Task 5 includes generating GIS maps.

Marker Geospatial Cost Estimate

The following table is Marker’s cost proposal for the project.

LABOR COSTS																
PROJECT STAFF	ROLE IN PROJECT	Hourly Rate (\$/hr)	Task 1 Kickoff Meeting		Task 2 Pavement Condition Surveys		Task 3 Data Entry/PCI		Task 4 M&R Strategies		Task 5 Budgetary Analysis & Final Reports		Task 6 Training & Technical Support		TOTALS	
			Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	Hrs	Cost (\$)	HOURS	COST
Ken Huisman	Project Manager	55.00	\$ -	30	\$ 1,650	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	30	\$ 1,650	
Ausrine Kelbauskiene	Data/Program Analyst	38.00	\$ -	54	\$ 2,052	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	54	\$ 2,052	
John Zimmer	Field Survey Technician	28.00	\$ -	256	\$ 7,168	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	256	\$ 7,168	
Raquel Huisman	Administrative	18.00	\$ -	8	\$ 144	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	8	\$ 144	
Estimated Total Direct Labor Hours/Costs			\$ -	348	\$ 11,014	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	348	\$ 11,014	
OVERHEAD COST (155% Of Direct Labor)			\$ -	\$ 17,072	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 17,072	
DIRECT COSTS																
Travel			\$ -	\$ 10,537	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 10,537	
Reproduction & Supplies			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	
TOTAL ESTIMATED DIRECT COSTS			\$ -	\$ 10,537	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 10,537	
TOTAL LABOR, OVERHEAD AND DIRECT COSTS			\$ -	\$ 38,623	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 38,623	
FIXED FEE 10%			\$ -	\$ 3,862	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 3,862	
TOTAL COSTS BY TASK			\$ -	\$ 42,485	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 42,485	

Assumptions

Task 2 assumes 634 miles and one-time mobilization. A minimum of 2 passes on all arterials with 4+ lanes, and 1 pass on residential/locals and collectors. City to provide a StreetSaver database and complete GIS street centerline or polygon map identifying streets for pavement inspection.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

 X Not furnish any facilities or equipment for this Agreement;

or

 Furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

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, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. 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, to the extent caused by the negligence or willful misconduct during the performance of 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. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

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, arising out of activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, 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 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 accident. 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) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.

- (4) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers’ Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers’ Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

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)

- (5) 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. Professional Liability (Errors and Omissions) insurance:

Is _____ Is not X [check one] required for this Agreement.

If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

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, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.
- (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, including excess insurance, 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:VI. 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 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) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668

Insurance certificates also may be faxed to (888) 355-3599, or e-mailed to:
certificates-sacramento@riskworks.com

- (3) 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 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 that 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.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.

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 \$100,000.00. 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
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814

- 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
Procurement Services Division
915 I Street, Second Floor
Sacramento, CA 95814

- 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.

EXHIBIT F

PROFESSIONAL SERVICES AGREEMENT

ADDITIONAL REQUIREMENTS FOR SURVEYING, MATERIAL TESTING, AND INSPECTION SERVICES

Land surveying, material testing, and inspection services provided for a City construction project during the design, pre-construction, construction, or post-construction phases of the project constitute “public works” under California Labor Code section 1720 *et seq.*, and are subject to the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and its implementing regulations set forth in Title 8 of the California Code of Regulations. If this Agreement includes any of these services (hereafter collectively referred to as “Public Work”), the Contractor and any subcontractor or subconsultant performing any Public Work shall comply with all applicable requirements of the California Labor Code and the Sacramento City Code, including the following requirements:

- 1. Workers’ Compensation Certification.** If this Agreement is for the performance of any Public Work, in accordance with California Labor Code section 1861 the Contractor shall sign the following certification:

I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Contractor Signature

- 2. DIR Registration.** California Labor Code section 1725.5 requires the Contractor and any subcontractor or subconsultant performing any Public Work under this Agreement to be currently registered with the California Department of Industrial Relations (DIR), as specified in Labor Code section 1725.5. Labor Code section 1771.1 provides that a contractor or subcontractor/subconsultant shall not be qualified to engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5.

To be completed by the City Representative if this Agreement is for the performance of any Public Work:

Contractor DIR registration #: _____

Prior to the performance of Public Work by any subcontractor or subconsultant under this Agreement, Contractor shall furnish City the subcontractor or subconsultant's current DIR registration number.

3. **Payment of Prevailing Wages.** If this Agreement is for the performance of any Public Work, and the amount of the Agreement is more than \$25,000, Contractor and any subcontractor or subconsultant performing any Public Work shall comply with the provisions of Sacramento City Code section 3.60.180 and applicable provisions of California Labor Code section 1770 *et seq.*, which require, among other things, that the Contractor and subcontractor(s)/subconsultant(s) pay not less than the prevailing rate of wages for Public Work, as determined by the Director of the California DIR pursuant to Labor Code section 1773. For any Public Work performed under this Agreement, Contractor and every subcontractor or subconsultant shall maintain payroll records and submit certified payroll records and other labor compliance documentation electronically to City staff when and as required by City. In addition, Labor Code section 1771.4 requires the Contractor and any subcontractor or subconsultant performing any Public Work to furnish electronic payroll records directly to the Labor Commissioner.

This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in Labor Code section 1771.4. The Contractor and any subcontractor or subconsultant performing Public Work will be subject to withholding and penalties for violation of prevailing wage requirements in accordance with applicable law, including Labor Code sections 1726, 1741, 1771.5, and 1775, and City Code section 3.60.180. Questions regarding the City's Labor Compliance Program should be directed to the contracts staff for the City Department issuing this Agreement.

4. **Apprentices.** If this Agreement is for the performance of any Public Work, and the amount of the Agreement is \$30,000 or more, the Contractor and any subcontractor or subconsultant performing any Public Work under this Agreement shall comply with Sacramento City Code section 3.60.190, section 1777.5 *et seq.* of the California Labor Code, and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. The Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7.
5. **Working Hours.** If this Agreement is for the performance of any Public Work, Contractor and any subcontractor or subconsultant performing any Public Work shall comply with, and be subject to enforcement under, the provisions of Sacramento City Code section 3.60.180 and California Labor Code section 1810 *et seq.*, governing the working hours of employees performing Public Work.
6. **Subcontractors.** The Contractor shall include these provisions in every subcontract or subagreement for every lower-tier subcontractor or subconsultant performing Public Work under this Agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RLIPack[®] FOR DESIGN PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. C. WHO IS AN INSURED is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "product-completed operations hazard".

2. The insurance provided to the additional insured by this endorsement is limited as follows:

- a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
- b. This insurance does not apply to the rendering of or failure to render any "professional services".
- c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.

3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
- b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.

4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

A. Broad Form Named Insured

The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

B. Employees As Insureds

The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Blanket Additional Insured

The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

E. Employee Hired Autos

1. The following is added to the **SECTION II – LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance Condition** in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1)** Any covered "auto" you lease, hire, rent or borrow; and
- (2)** Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

F. Fellow Employee Coverage

SECTION II – LIABILITY COVERAGE, Exclusion B.5. does not apply if you have workers compensation insurance in force covering all of your employees.

G. Auto Loan Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be _____% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss

Jobs performed for an person or organization that you have agreed with in a written contract to provide this agreement