

## **INSTRUCTIONS TO PROPOSERS**

### **1. INSTRUCTIONS**

The vendor shall carefully examine the instructions contained herein and satisfy himself/herself as to the conditions with which he/she must comply prior and with the conditions affecting the eventual award of a Contract for Services. Vendors shall state in their quote that they have read these instructions and will comply.

### **2. QUOTE SUBMISSION**

Submittals shall be placed in a clearly marked envelope with the Project Name and Number marked clearly on the envelope. The suggested fee for the service shall be submitted in a separate, sealed envelope. Quotes shall be delivered or mailed to:

City of Stockton  
Public Works Department  
1465 S Lincoln St., Stockton, CA 95206  
Attn.: "Cristina Pfeffer"

### **3. COMPETENCY OF VENDORS**

(a) LICENSE - Vendors must be properly licensed in accordance with the laws of the State of California.

(b) CONTRACTOR REGISTRATION REQUIREMENTS- A contractor or subcontractor shall not be qualified to bid on, be listed in a bid quote, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Only vendors/contractors that are subject to the public works statutes would be required to register. A&E firms that are not doing or subcontracting out tasks subject to public work requiring prevailing wages are not subject to registration and public works laws. Design work is not subject to prevailing wages and, therefore, not considered public work, and the firm does not have to register. For example, A&E tasks that are subject to public works laws would be surveying, soil testing, material testing, and building/construction inspection, as there are prevailing wage determinations for these works.

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

Department of Industrial Relations- Contractor Registration information and web link:  
<http://www.dir.ca.gov/Public-Works/PublicWorks.html>

In compliance with Senate Bill 854 and the California Labor Code, all vendors shall include with their bid proof of registration from the Department of Industrial Relations that includes the contractor's legal name, registration number, license type/number, registration date and expiration date, for every contractor and subcontractor, regardless of tier. For subcontractor proof of registration that could not be included with the bid, the contractor will be allowed to submit subcontractor registration proof no later than four business days after bid opening.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors must submit their certified payroll records directly to the Division of Labor Standards Enforcement Compliance Monitoring Unit, as well as the City of Stockton.

Vendors shall complete and include with their quote a signed DIR Self-Certification Form (**Exhibit A**).

#### **4. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF THE WORK**

**VENDOR'S RESPONSIBILITY-** The vendor shall examine carefully the site of the work and the plans and specifications therefore. He/She shall investigate and satisfy himself/herself as to conditions to be encountered, the character, quality and quantity of surface, subsurface materials or obstacles to be encountered, the work to be performed, materials to be furnished, and as to the requirements of the bid, plans and specifications of the contract.

#### **5. DISCREPANCIES OR ERRORS**

If omissions, discrepancies or apparent errors are found in the plans and specifications prior to the date of quote opening, the vendor shall submit a written request for a clarification, which will be given to the form of addenda to all vendors if time permits.

#### **6. ADDENDA OR CLARIFICATIONS**

Each quote shall include all addenda or clarifications issued during the bidding period acknowledged by the vendor's signature thereon. Failure to so include or acknowledge an addendum or clarification may result in the quote being rejected as not responsive.

#### **7. QUOTE DOCUMENTS**

(a) **QUOTE FORM-** City of Stockton standard quote forms, which, when filled out and executed, may be submitted as a quote. Quotes not presented on City forms shall be cause for considering the bid as non-responsive. The quote form must be submitted in the same name style and manner as is used on the vendor's license and prequalification. Quote forms may be obtained from the City of Stockton website at [www.stocktonca.gov/pwbid](http://www.stocktonca.gov/pwbid)

All quotes shall give the prices in the manner required by the bid and shall be signed by the vendor or his/her duly authorized representative, with his/her address. If the quote is made by an individual, his/her name, postal address, and signature must be shown. If the quote is made by a firm or partnership, the name and postal address of the firm or partnership and the signature of one or both partners must be shown; if made by a corporation, the quote shall show the name of the state under the laws of which the corporation was chartered, the name of the corporation and the title of the person who signs on behalf of the corporation. The corporate seal must be used. All vendors shall

provide proof of DIR registration (print screen from DIR website <https://efiling.dir.ca.gov/PWCR/Search>).

(b) **LIST OF PROPOSED SUBCONTRACTORS**- Vendor shall list names of all subcontractors performing work in excess of one-half of one percent (0.5%) or \$10,000 (whichever is greater) of the Vendor's total bid, on the form provided in the bidding document. Each vendor shall give the name, business address, proof of DIR registration (print screen from DIR website <https://efiling.dir.ca.gov/PWCR/Search>), contractor license number, description of the work, and the dollar amount to be PAID the subcontractor, for each subcontractor that will be used on the project.

(c) **NON-COLLUSION DECLARATION** - The vendor shall execute a Non-Collusion Declaration in the appropriate space provided in the bid form. Any bid made without such declaration or in violation thereof, and also any contract let thereunder shall be absolutely void unless a correct declaration is received after the bid deadline with approval of the City Council.

Vendor shall complete and include with their quote a signed Non-Collusion Declaration Form (**Exhibit B**).

## **8. TITLE VI**

Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d).

<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>

Vendor shall complete and include with their quote a signed Title VI Self-Certification Form (**Exhibit C**).

The City of Stockton is committed to complying with the requirements of Title VI in all of its programs and activities. Vendors for work with the City of Stockton must meet the requirements of Title VI at all times.

## **9. DISCRIMINATION AND HARASSMENT POLICY**

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit D**). The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating and resolving complaints of discrimination and harassment in the workplace.

## **10. SUBCONTRACTING**

The Vendor shall perform with its own organization contract work amounting to not less than seventy percent (70%) of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract, and the amount of any such "Specialty Items" so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with its own organization. When items of work in the Bidding Schedule are preceded by the letter (S), said items are designated "Specialty Items." Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid

price. When a portion of an item is subcontracted, the value of work subcontracted will be based on the estimated percentage of the contract item bid price, determined from information submitted by the Vendor, subject to approval by the Project Manager.

Before work is started on a subcontract, the Vendor shall file with the Project Manager a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work and the dollar amount to be so subcontracted.

#### **11. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE**

The vendor shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement. <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1770-1784>

#### **12. PREVAILING WAGE RATES**

The prime Vendor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates when applicable to this project. In accordance with the provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Wages of the State of California has determined the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093, and similar purposes applicable to the work to be done. These wages are set forth in the General Prevailing Wage Rates for this project and are available from the California Department of Industrial Relations' internet website at: <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>.

The Vendor performing the work shall be responsible for obtaining a copy of the State wage rate determination. Pursuant to 1773.2 of the Labor Code, the Vendor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

Title 40, Chapter 31(VI), Section 3143 of the United States Code applies. If any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by the contract is discovered to have been paid a rate of wages less than the contract requires, then the City by written notice may terminate the Contractor's right to proceed with the work in question. The City may have the work completed, by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the City for any excess costs the City incurs.

(a) PAYROLL RECORDS- The prime Contractor to whom the contract is awarded shall insure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the prime Contractor's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors.

(b) APPRENTICESHIP STANDARDS - The prime Contractor shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the (1) certified approval by local joint apprenticeship committees for the employment and

training of apprentices, and (2) contribution of funds to administer and conduct apprenticeship programs.

**13. REJECTION OR IRREGULAR QUOTES**

When quotes are signed by an agent other than the officer or officers of a corporation authorized to sign contracts on its behalf, or are signed by an agent other than a partner of partnership, or by an agent for an individual, a Power of Attorney must be on file with the Department of Public Works, prior to opening quotes or shall be submitted with the quote; otherwise, the quote will be rejected as irregular or unauthorized.

**14. COMPETITIVE BIDDING**

If more than one bid is offered by an individual, firm, partnership, corporation, association, or any combination thereof, under the same or different names, all such bids may be rejected. A party who has quoted prices on materials or work to a vendor is not thereby disqualified from quoting prices to other vendors.

All vendors are put on notice that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this contract is in violation of the competitive bidding requirements of the City and may render void any contract let under such circumstances. A non-collusive affidavit is required.

**15. LIQUIDATED DAMAGES**

Vendors should note the provision for Liquidated Damages for this contract is specified in the contract Special Provisions.

**16. LABOR NON-DISCRIMINATION**

Attention is directed to the following notice that is required by Chapter 5, Division 4 of Title 2, California Code of Regulations "NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM" (GOV. CODE, SECTION 12990). Your attention is directed to the "Nondiscrimination Clause" set forth elsewhere, "Labor Non-discrimination," which is applicable to Nonexempt State contracts and subcontracts, and to the "Standard California Nondiscrimination Construction Contract Specifications": set forth therein. The Specifications are applicable to all Non-exempt State construction contracts of \$5,000 or more.

**17. BUSINESS LICENSE**

The successful vendor must obtain and maintain a valid City of Stockton business license throughout the fiscal periods embraced by the duration of the contract.

**18. INSURANCE**

Please see attached **Exhibit E**, Summary of Indemnity and Insurance Requirements Checklist. This form is for information and notes the documentation required to be submitted before commencing work. Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this agreement the policies of insurance specified in **Exhibit F**, which is attached to this agreement and incorporated by this reference.

Maintenance of proper insurance coverage is a material element of this contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

The Proponent shall satisfy these insurance requirements concurrently with the signing of the contract prior to commencement of work. Please contact City of Stockton Risk Services at (209) 937-5037. Any exceptions to this language may result in a non-responsive proposal.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own Insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City of Stockton.

The City of Stockton reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the city at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City of Stockton in the same manner and to the same extent as Contractor is bound to the City of Stockton under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the City of Stockton Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the city.

## **19. WORKER'S COMPENSATION INSURANCE**

The successful bidder shall comply with all provisions of the Worker's Compensation and Safety Laws of the State of California, Divisions IV and V of the Labor Code, and shall use all of the accepted and best safety practices for the public and/or his/her employees.

In accordance with Labor Code Section 1725.5 et seq., the successful bidder, prior to executing the contract to do the work, shall take out and maintain in full force and effect workers compensation insurance with an insurance carrier authorized to transact business in the State of California covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such workers compensation insurance shall furnish to the City of Stockton an insurance certificate prior to the commencement of the work and said certificates shall contain a provision that the coverage thereunder will not be cancelled until at least thirty (30) days prior written notice has been given to the City.

## **20. INDEMNIFICATION AND HOLD HARMLESS**

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, protect, defend with counsel approved by City and at Contractor's sole cost and expense, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this agreement, or from any violation of any federal, State, or municipal law or ordinance, or City policy, by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Contractor to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Contractor under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Contractor to a greater extent than permitted under the public policy of the State of California, the parties agree that Contractor's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this agreement by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this agreement, or other obligation or fault has been determined. Contractor shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active

negligence or willful misconduct on the part of the City, City will then reimburse Contractor for amounts paid in excess of Contractor's proportionate share of responsibility for the damages within 30 days after Contractor provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Contractor is not obligated to defend or indemnify City in any amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this agreement, Contractor shall indemnify, defend, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against all claims, losses, expenses, and costs including, but not limited to, attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Contractor, regardless of whether such claim may be covered by any applicable workers compensation insurance. Contractor's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts.

## **21. LOCAL EMPLOYMENT ORDINANCE**

This project is subject to the requirements of the City's Local Employment Ordinance. For further information, please see: [http://qcode.us/codes/stockton/view.php?topic=3-3\\_68-i-3\\_68\\_095](http://qcode.us/codes/stockton/view.php?topic=3-3_68-i-3_68_095)

The Contractor shall submit a Final Local Employment Ordinance Report upon completion of the project. Said Final Report shall be considered a final construction punch list item, and failure to submit the report shall be cause for withholding the Notice of Completion and release of retention. The Contractor shall submit a project Final Local Employment Ordinance Report in the suggested form and content as shown by **Exhibit G** and/or requested by the Project Manager.

The Contractor shall provide Monthly Local Employment Ordinance compliance Reports as part of the Contractor's progress pay requests. The form and content of the Monthly Reports shall provide the same information as noted in **Exhibit F** or as requested by the Project Manager. Failure to submit said Monthly Reports could result in the City withholding 5% of the monthly progress payment until said report is submitted.

The Contractor shall promptly submit their Good Faith Effort documentation prior to execution of the construction contract. An explanation of the reasons for non-compliance and future good faith efforts which can lead to project compliance will be part of the Monthly Reports.

Monthly Reports shall be compiled with all applicable information and submitted at the end of the project as a part of the Final Report. All reporting required for the Local Employment Ordinance shall be paid as in all other items of work.

## **22. LOCAL BUSINESS PREFERENCE ORDINANCE**

The City's Local Business Preference Ordinance applies to this project. For further information, please see:



**23. SANCTIONS**

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

**24. SAMPLE CONTRACT**

A sample contract is attached (**Exhibit H**) and could be subject to change.

**25. PLANHOLDERS LIST**

Vendors should submit company name and contact information to Katrina Tavares at (209) 937-8676 or email at [Katrina.Tavares@stocktonca.gov](mailto:Katrina.Tavares@stocktonca.gov).

**DEPARTMENT OF INDUSTRIAL RELATIONS  
LABOR COMPLIANCE  
SELF-CERTIFICATION**

We, the undersigned, self-certify that we will comply with all California Department of Industrial Relations (DIR) laws, rules and regulations that apply to Public Work as defined in Labor Code Section 1720(a)(1), as well as Senate Bill 854 (2014), and all other related statutes.

In addition, we acknowledge that to be eligible to bid on City of Stockton Public Works projects, we and all subcontractors under us are registered, and will remain registered with the DIR until project completion; otherwise, we will be disqualified from consideration as a bidder for the subject project.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NON-COLLUSION DECLARATION  
(Title 23 United States Code Section 112 and Public  
Contract Code Section 7106)

To the CITY of STOCKTON DEPARTMENT OF PUBLIC WORKS.

The undersigned declares:

I am the \_\_\_\_\_, of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_

(Signature)

**TITLE VI VIOLATION SELF-CERTIFICATION**

We, the undersigned, self-certify that pursuant to Federal Code of Regulations (CFR), 23 CFR 200.9, 633 and 49 CFR 21.7, we do not have any unresolved violations under Title VI of the Civil Rights Act of 1964 and related statutes, including Americans with Disabilities Act (ADA). In addition, we acknowledge that an unresolved Title VI violation will disqualify us for consideration as a bidder for the subject project.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
TITLE

DATE: \_\_\_\_\_

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 1 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**I. PURPOSE**

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

**II. POLICY**

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 2 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

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PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 3 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT**

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
  2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
  3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 4 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
  2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or



**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	Directive No. <b>HR-15</b>	Page No. <b>5 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From: <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 6 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

- i. Retaliation for making harassment reports or threatening to report harassment.
- D. Affordable Care Act (ACA) Anti-Retaliation  
Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:
1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
  2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
  3. Testifies in a proceeding concerning such violation;
  4. Assists or participates in a proceeding concerning a violation; or
  5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

#### **IV. REPORTING AND COMPLAINT PROCEDURES**

##### **A. Immediate Action Required**

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 7 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
  - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
  - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
  - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	Directive No. <b>HR-15</b>	Page No. <b>8 of 14</b>
	Effective Date:  <b>5/1/2015</b>	Revised From: <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.
2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment
- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
  - b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
  - c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 9 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.
- V. **INVESTIGATION PROCEDURES**
- A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 10 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

**B. Investigative Guidelines**

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 11 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

**VI. RESPONDING TO THE COMPLAINT**

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 12 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:  5/1/2015</b>	<b>Revised From: 7/27/09 4/6/09 3/1/2010 (see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
  1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
  2. Unfounded: The investigation proved that the act(s) or omission(s)



**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 13 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

## **VII. DISCIPLINE**

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

## **VIII. ALTERNATIVE REMEDIES**

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

**CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 14 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**IX. COMMUNICATION OF POLICY**

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON  
CITY MANAGER

EXHIBIT E  
SUMMARY OF INDEMNITY AND INSURANCE REQUIREMENTS CHECKLIST

This checklist is provided to assist in ensuring the provision of all documentation required by the insurance exhibit (Exhibit F). The insurance exhibit details the insurance terms to be met and is controlling.

Insurance Certificate(s)/Endorsement(s):

Certificate of Insurance:

- \_\_\_\_\_ Name of Insured on Certificate matching Company named on Contract
- \_\_\_\_\_ Certificate lists the City of Stockton, its officers, officials, employees, and volunteers as Additional Insured
- \_\_\_\_\_ Certificate Holder block reads: City of Stockton, Its Officers, Officials, Employees, and Volunteers, 400 E Main St, 3rd Floor – HR, Stockton, CA 95202
- \_\_\_\_\_ Insurance Coverages/Limits are correct per the insurance requirements exhibit
- \_\_\_\_\_ General Liability is on an occurrence basis
- \_\_\_\_\_ Insurance Company acceptable financial rating (not less than "A: VII," and California Admitted carrier)
- \_\_\_\_\_ Endorsement page(s) are attached to the insurance certificate(s)
- \_\_\_\_\_ Schedule box(es) on Endorsement(s) are filled in
- \_\_\_\_\_ Name of Additional Insured Organization wording: "City of Stockton, its officers, officials, employees, and volunteers." (Blanket wording is acceptable)
- \_\_\_\_\_ Location on Additional Insured Endorsement(s) schedule box filled in with all locations work is done under the contract. (Blanket wording is acceptable)
- \_\_\_\_\_ Additional insured form is **at least as broad as** CG 20 10 11 85
- \_\_\_\_\_ Endorsement(s) include (*when required – see your insured's specific insurance exhibit*):
  - Additional Insured endorsement for:
    - Additional insured for current/ongoing operations (General Liability)
    - Completed operations (General Liability)
  - Primary and Non-Contributory (General Liability)
  - Waiver of Transfer of Rights of Recovery Against Others to Us (General Liability)
  - Waiver of Transfer of Rights of Recovery Against Others to Us (Workers' Compensation)

**\*\*Important Note:** The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to sole negligence of the Named Insured.

Contract Bond(s):

- \_\_\_\_\_ Name on Bond matches Company name on Contract
- \_\_\_\_\_ Surety Admitted to transact Surety in California
- \_\_\_\_\_ AM Best Rated at least "A:VIII"
- \_\_\_\_\_ Faithful Performance Bond(s) and Labor & Material Bond(s) at 100% of contract
- \_\_\_\_\_ Maintenance Bond(s) at 20% of contract
- \_\_\_\_\_ Bond(s) signed and sealed by Contractor and Surety

Please direct any questions to:  
City of Stockton Risk Services  
209-937-8233

**Exhibit F:**  
**Insurance Requirements**  
(HVAC Services)

Contractor shall procure and maintain for the duration of the contract, *and for 5 years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

**Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any

and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### **Other Insurance Provisions**

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

- 1. The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.
- 2. For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.
- 3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Stockton.**

### ***Umbrella or Excess Policies***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense

requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

***Waiver of Subrogation***

**Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and **a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

***Subcontractors***

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must

be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*

***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

**Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees and Volunteers  
400 E Main Street, 3rd Floor – HR  
Stockton, CA 95202

**LOCAL EMPLOYMENT ORDINANCE  
COMPLIANCE DOCUMENTATION**

**Monthly Report / Final Report *(choose one)***

**for**

**ON-CAL HVAC EQUIPMENT REPAIR AND  
MAINTENANCE SERVICES  
PROJECT NO. OM-24-012**

**CITY OF STOCKTON  
PUBLIC WORKS DEPARTMENT**



**Notice to Proceed: \_\_\_\_\_  
Date**



## General Information

Project Name: \_\_\_\_\_

Project Number: \_\_\_\_\_

Contract Date: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_

Type of Contractor's License (s): \_\_\_\_\_

**This page is to be completed by the winning bidder and each subcontractor. Subsequent pages are to be completed by the winning bidder, incorporating input from each subcontractor, at the conclusion of the project.**

# SUMMARY SHEET FOR LOCAL RESIDENT PARTICIPATION

List the actual number of hours performed in Table 1

TABLE 1

ITEM	DESCRIPTION	HOURS TO DATE
A	Total number of hours performed at the jobsite	
B	Qualifying number of labor hours performed at the jobsite	
C	Qualifying number of supervision hours performed at the jobsite	
D	Qualifying number of office hours performed at the jobsite	

Qualifying hours are defined as hours performed by Local Residents.

$$\text{Percent local participation} = \frac{(B + C + D)}{A} \times 100 =$$

## SUMMARY SHEET FOR APPRENTICESHIP REQUIREMENT

Trade/ Classification	Number of Journeymen	Number of Apprentices

TABLE 2



# GOOD FAITH EFFORT DOCUMENTATION

## CITY OF STOCKTON PUBLIC WORKS DEPARTMENT

**Please check all boxes that apply:**

- Placed a valid job order for existing and projected position vacancies with the local office of the State Employment Development Department, for no less than 10 consecutive calendar days.
- Placed a valid job order for existing and projected position vacancies with Worknet of San Joaquin County, for no less than 10 consecutive calendar days.
- Advertised existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in conspicuous local authorized public places, including but not limited to the City Hall, schools, post offices, libraries, and senior citizens' centers.
- Conducted a job informational meeting to inform the community of employment opportunities of the contractor, to be held at a City facility (may be combined with other contractors).
- Provided ongoing assistance to Stockton residents in completing job application forms.
- Conducted a job application workshop to assist the community in applying and interviewing for jobs in the contracting industry, to be held at a City facility (may be combined with other contractors).
- Established a job application center located in the City of Stockton, where job applications may be obtained, delivered to and collected.
- Conducted job interviews within 10 miles of the location designated for contract performance.
- Advertised valid existing and projected position vacancies through the local media, such as community television network, local newspapers of general circulation, and trade papers or minority focus newspapers.
- Telephone solicitation of known potential local subcontractors or employees.
- Any other means of obtaining employees who are residents of Stockton that are reasonably calculated to comply with the goals of this ordinance.

**Please provide supporting documentation for all boxes checked.**

I declare the above information is true and accurate and submitted under penalty of perjury.

By my signature below, I acknowledge that I have met the requirements of the City of Stockton's Local Employment Ordinance.

I understand this information is subject to audit verification, and I acknowledge and am hereby advised that upon a finding of non-compliance with the Local Employment Ordinance Provisions, I may be declared by the City to be an irresponsible bidder on future projects.

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Date

**\*\*\*THIS IS A SAMPLE – subject to change\*\*\***

**CONTRACT FOR SERVICES**

THIS CONTRACT is entered into this \_\_\_ day of \_\_\_\_\_ 2022, between the CITY OF STOCKTON, a municipal corporation ("CITY), and **NAME OF CONTRACTOR a (INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP)**, with a business address at **ADDRESS/CITY/STATE/**, hereinafter called "CONTRACTOR.," THIS CONTRACT is for the **SERVICE NAME (PROJECT NO.)**, hereinafter referred to as "SERVICE".

**RECITALS**

- A. CONTRACTOR represents that it is licensed in the State of California and is qualified, willing and able to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. CONTRACTOR represents that it is registered pursuant to Labor Code Section 1725.5 and will register annually with the Department of Industrial Relations, if the services have a wage determination for the services outlined in the SCOPE OF WORK section of this Contract.
- C. CONTRACTOR represents that it will pay all required prevailing wages under California Labor Code for all services provided that have a wage determination.
- D. CITY finds it necessary and advisable to use the services of the CONTRACTOR for the purposes provided in this Contract.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions in this Contract, CITY and CONTRACTOR agree as follows:

**1. SCOPE OF SERVICES.** Subject to the terms and conditions set forth in this Contract, CONTRACTOR shall undertake and complete the services described in **ENTER Exhibit # (scope and specifications)**. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A and compatible with the standards of the profession. CONTRACTOR agrees that it shall provide fully complete services including all labor, materials, tools, equipment and insurance required and that are acceptable to the CITY.

**2. COMPENSATION.** CITY shall pay CONTRACTOR for services outlined in **ENTER Exhibit # (scope and specifications)** according to the fee not to exceed the schedule detailed in **ENTER Exhibit # (fee schedule)**, which is attached to this Contract and incorporated by this reference. CONTRACTOR agrees this fee is for full remuneration for performing all services and furnishing all staffing, materials and tools called for in the scope of services. The payments shall be made on a monthly basis upon

**Contract Name, Number  
Date**

receipt and approval of CONTRACTOR'S invoice for completed work. Total compensation for services and reimbursement for costs shall not exceed **\$ENTER AMOUNT** or as otherwise mutually agreed to in a Contract Amendment.

Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

- a. Invoices submitted by CONTRACTOR to CITY must contain a brief description of work performed, location of work, time used, materials and special equipment and City project number. Payment shall be made within thirty (30) days of approval of invoice by City.
- b. Upon completion of work and acceptance by CITY, CONTRACTOR shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by CITY upon receiving a written request thirty (30) days in advance of said time limitation. CITY shall have no obligation or liability to pay any invoice for work performed which CONTRACTOR fails or neglects to submit within sixty (60) days, or any extension thereof granted by the CITY, after work is accepted by CITY.

**3. INSURANCE.** During the term of this Contract, CONTRACTOR shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit D (Insurance Requirements and Forms) which is attached to this contract and incorporated by this reference, and shall otherwise comply with the other provisions of Exhibit D (Insurance Requirements and Forms). Maintenance of proper insurance coverage is a material element of this contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in Exhibit D, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this



Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONTRACTOR.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. CONTRACTOR further agrees to include these same provisions with any subcontractor regardless of tier. A copy of the CITY Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the CITY.

**4. INDEMNITY AND HOLD HARMLESS.** With the exception that this section shall in no event be construed to require indemnification by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, CONTRACTOR

**Contract Name, Number  
Date**

shall indemnify, protect, defend with counsel approved by CITY and at CONTRACTOR'S sole cost and expense, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, State, or municipal law or ordinance, or City Policy, by CONTRACTOR or CONTRACTOR'S officers, agents, employees, volunteers or subcontractors. CONTRACTOR shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of CONTRACTOR to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by CONTRACTOR under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With exception that this section shall in no event be construed to require indemnification, including the duty to defend, by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, the parties agree that CONTRACTOR'S duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by CONTRACTOR or CONTRACTOR'S officers, agents, employees, volunteers or subcontractors. CONTRACTOR'S duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY'S liability, breach of this Agreement, or other obligation or fault has been determined. CONTRACTOR shall be immediately obligated to pay for CITY'S defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse CONTRACTOR for amounts paid in excess of CONTRACTOR'S proportionate share of responsibility for the damages within 30 days after CONTRACTOR provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures CONTRACTOR is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by CONTRACTOR to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this

Agreement, CONTRACTOR shall indemnify, defend, and hold harmless the City of Stockton, its officers, officials, employees and volunteers from and against all claims, losses, expenses, and costs including, but not limited to attorneys' fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of CONTRACTOR, regardless of whether such claim may be covered by any applicable workers compensation insurance. CONTRACTOR'S indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR under workers' compensation acts, disability acts, or other employee benefit acts.

CONTRACTOR'S obligation to defend, indemnify, and hold the CITY, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Contract for CONTRACTOR to procure and maintain a policy of insurance.

CONTRACTOR/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

If any section, subsection, sentence, clause or phrase of this indemnification is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this indemnification.

**5. SCHEDULE AND TERM.** CONTRACTOR shall perform the scope of work as described in **ENTER Exhibit # (scope and specifications)** according to the schedule detailed in **ENTER Exhibit # (scope and specifications)**, which is attached to this Contract and incorporated by this reference. This contract shall commence on the date written above and shall expire on **ENTER DATE**, unless extended by mutual agreement through the issuance of a Contract Amendment. This contract provides for two (2), one (1) year extensions at the same rates and terms as outlined in **ENTER Exhibit # (scope and specifications)** and **ENTER Exhibit # (fee schedule)**.

**6. CONFORMANCE TO APPLICABLE LAWS.** CONTRACTOR shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d)  
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (Exhibit C). The purpose of this policy is to reaffirm the CITY's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2).

d. PREVAILING WAGE

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing raand employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>

f. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall

reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to CITY the sum of TWENTY FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

- iii. The CONTRACTOR to whom the contract is awarded shall insure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

f. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

**7. CONTRACT AMENDMENTS.** CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Project Manager to be necessary or advisable and to require such extra work as may be determined by the Project Manager to be required for the proper completion of the whole work contemplated.

Any such changes will be set forth in a Contract Amendment which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A Contract Amendment will not become effective until approved by the authorized City official.

**8. RIGHTS AND DUTIES OF CITY.** CITY shall make available to CONTRACTOR all data and information in the possession of CITY which both parties deem necessary to complete the work, and CITY shall actively aid and assist CONTRACTOR in obtaining such information as may be deemed necessary from other agencies and individuals.

**9. OBLIGATIONS OF CONTRACTOR.** Throughout the term of this Contract, CONTRACTOR represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the CONTRACTOR to practice its professions, and CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. CONTRACTOR shall meet with the Public Works Director or other personnel of CITY or third parties as necessary on all matters connected with the carrying out of CONTRACTOR'S services. Such meetings shall be held at the request of either party hereto. CONTRACTOR further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

**10. TERMINATION.** This Agreement is effective on the Effective Date. The City may terminate this Contract and work pursuant to any of all scope of works at any time by mailing a notice in writing to Contractor. The Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of work actually completed at the time the notice of termination is received.

**11. CONTRACTOR STATUS.** In performing the obligations set forth in this Contract, CONTRACTOR shall have the status of an independent contractor and CONTRACTOR shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of CONTRACTOR are its agents and employees, and are not agents of the CITY. Subcontractors shall not be recognized as having any direct or contractual relationship with the CITY. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of CONTRACTOR. The CONTRACTOR shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The CONTRACTOR is responsible to the CITY for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by CONTRACTOR.
  - i. It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR'S personnel.
  - ii. As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against the CITY based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

**12. ASSIGNMENT.** CONTRACTOR shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the CITY, and then only upon such terms and conditions as CITY may set forth in writing. CONTRACTOR shall be solely responsible for reimbursing subcontractors.

**13. HEADINGS NOT CONTROLLING.** Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

**14. NOTICES.** Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To CONTRACTOR: ENTER  
CONTRACTOR  
INFORMATION  
HERE

To City: Public Works Director  
City of Stockton  
22 E. Weber Ave., Rm. 301  
Stockton, CA 95202

**15. LICENSES, CERTIFICATIONS, AND PERMITS.** Prior to the CITY'S execution of this Contract and prior to the CONTRACTOR engaging in any operation or

activity set forth in this Contract, CONTRACTOR shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. CONTRACTOR covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

**16. RECORDS AND AUDITS.** CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONTRACTOR agrees that CITY or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested, and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. CONTRACTOR agrees to maintain such records for a period of three years from the date that final payment is made.

**17. CONFIDENTIALITY.** CONTRACTOR shall exercise reasonable precautions to prevent the unauthorized disclosure and use of CITY'S reports, information, or conclusions.

**18. CONFLICTS OF INTEREST.** CONTRACTOR covenants that other than this Contract, CONTRACTOR has no financial interest with any official, employee, or other representative of the CITY. CONTRACTOR and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of CONTRACTOR'S services under this Contract. If such an interest arises, CONTRACTOR will immediately notify CITY.

**19. WAIVER.** In the event either CITY or CONTRACTOR at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

**20. GOVERNING LAW.** California law shall govern any legal action pursuant to this Contract with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

**21. DISPUTE RESOLUTION.** Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between senior managers of each Party having authority to resolve the dispute.



1. **Venue**  
Any controversy or claim between the Parties shall be determined with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.
2. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.

**22. NO PERSONAL LIABILITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY or for any amount due CONTRACTOR.

**23. INTEGRATION AND MODIFICATION.** The response by CONTRACTOR to the Request for Proposals or Qualifications and the Request for Proposals or Qualifications on file with the CITY are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract that shall supersede such response to Request for Proposals or Qualifications. This Contract represents the entire integrated agreement between CONTRACTOR and CITY, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by CONTRACTOR and CITY. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

**24. SEVERABILITY.** The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

**25. THIRD PARTY RIGHTS.** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than CITY and CONTRACTOR.

**26. AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

**CITY OF STOCKTON**

**ENTER NAME OF CONTRACTOR**

**Contract Name, Number  
Date**

By: \_\_\_\_\_  
HARRY BLACK  
CITY MANAGER

By: \_\_\_\_\_  
Signature

ATTEST:

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
ELIZA R. GARZA, CMC  
CITY CLERK

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DEPUTY CITY ATTORNEY

SAMPLE