

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2024, between the CITY OF STOCKTON, a municipal corporation ("City"), and **SALABER ASSOCIATES, INC.** whose address is **10969 TRADE CENTER DRIVE, SUITE 108, RANCHO CORDOVA, CA 95670** ("Consultant") for the **MCKINLEY PARK RENOVATION (PROJECT NO. WR21017)**, hereinafter referred to as "Project".

RECITALS

- A. Consultant represents that it is licensed in the State of California and is qualified to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Contract.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions in this Contract, City and Consultant agree as follows:

1. SCOPE OF SERVICES. Subject to the terms and conditions set forth in this Contract, Consultant shall undertake and complete the services described in **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in **Exhibit A** and compatible with the standards of the profession. Consultant agrees that it shall produce a fully complete project that is acceptable to the City.

2. COMPENSATION. City shall pay Consultant for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$754,370.00** or as otherwise mutually agreed to in a Contract Amendment.

3. INSURANCE. During the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** and shall otherwise comply with the other provisions of **Exhibit C**.

4. INDEMNITY AND HOLD HARMLESS. Pursuant to the full language of California Civil Code §2782, design Professional agrees to indemnify, including the cost to defend, City of Stockton and its officers, officials, employees, and volunteers from and

against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional and its employees or agents in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the City of Stockton; and does not apply to any passive negligence of the City of Stockton unless caused at least in part by the Design Professional. The City of Stockton agrees that in no event shall the cost to defend charged to the Design Professional exceed that professional's proportionate percentage of fault. This duty to indemnify shall not be waived or modified by contractual agreement or acts of the parties.

5. SCHEDULE AND TERM. Consultant shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **August 31, 2026**, unless extended by mutual agreement through the issuance of a Contract Amendment.

- a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used, and include the 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, Consultant 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 Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after work is accepted by City.

6. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with all applicable federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

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 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.

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.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE RATES

Consultant 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 rates 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. Consultant 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 Consultant and each subcontractor's responsibility to ensure that the prevailing wage rates of concern is current and paid to the employee.

- i. The Consultant 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>. The Consultant 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 Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant 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 Consultant, 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. PAYROLL RECORDS - The Consultant to whom the contract is awarded shall ensure 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 Consultant'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. APPRENTICESHIP STANDARDS - The Consultant 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. 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. RIGHTS AND DUTIES OF CITY. City shall make available to Consultant 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 Consultant in obtaining such information as may be deemed necessary from other agencies and individuals.

8. OBLIGATIONS OF CONSULTANT. Throughout the term of this Contract, Consultant 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 Consultant to practice its professions, and Consultant shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. Consultant 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 Consultant's services. Such meetings shall be held at the request of either party hereto. Consultant 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.

9. OWNERSHIP OF WORK. All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Contract shall become and remain the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Contract. If any materials are lost, damaged, or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Contract and shall not be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

10. CONTRACT AMENDMENTS. City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work contemplated by Consultant. 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.

11. TERMINATION. The City may terminate this Contract at any time by mailing a notice in writing to Consultant. The Contract shall then be deemed terminated and no further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

12. CONSULTANT STATUS. In performing the obligations set forth in this Contract, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant 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 Consultant. The Consultant shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The Consultant 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 Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. 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 Consultant.
 - i. It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.
 - ii. As an independent contractor, Consultant 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.

13. ASSIGNMENT. Consultant 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. Consultant shall be solely responsible for reimbursing subcontractors.

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

15. 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 Consultant:	Salaber Associates, Inc.	To City:	Public Works Director
	10969 Trade Center Drive		City of Stockton
	Suite 108		22 E. Weber Ave., Rm. 301
	Rancho Cordova, CA 95670		Stockton, CA 95202

16. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or Professional Services Contract – SALABER ASSOCIATES, INC. – PROJECT NO. WR21017

(Updated 10/18/23)

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

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

Consultant agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. Consultant 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. Consultant agrees to maintain such records for a period of three years from the date that final payment is made.

18. CONFIDENTIALITY. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

19. CONFLICTS OF INTEREST. Consultant covenants that other than this Contract, Consultant has no financial interest with any official, employee, or other representative of the City. Consultant 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 Consultant's services under this Contract. If such an interest arises, Consultant will immediately notify City.

20. WAIVER. In the event either City or Consultant 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.

21. GOVERNING LAW. California law shall govern any legal action pursuant to this Agreement 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.

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

23. INTEGRATION AND MODIFICATION. The response by Consultant to the Request for Proposals and the Request for Proposals on file with the City Clerk are hereby Professional Services Contract – SALABER ASSOCIATES, INC. – PROJECT NO. WR21017

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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. This Contract represents the entire integrated agreement between Consultant 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 Consultant 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 Consultant.

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

SALABER ASSOCIATES, INC.

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

MANAGEMENT APPROACH

It is understood that SAI will perform all the duties as outlined in the Request for Proposals (RFP). SAI has performed these services, or similar ones, to their public agency clients, and they have been successfully audited by oversight agencies on many similar contracts and projects.

Managing the schedule and any potential claims will be an on-going job for SAI, every project is vulnerable to encountering physical, administrative, and coordination issues that could impact the schedule and costs. Addressing these issues as they are recognized will be critical to keeping the project on time and within budget. Our team members are versed in taking immediate action and involving all the right parties in any given situation. This approach requires decisive straightforward leadership at the field and administrative levels.

Quality Control Program

The Consultant Project Manager (CPM), Bob LoRusso, PE, President of SAI, will meet with the City of Stockton's PM to discuss their assessment of their work. If there are any areas that need to be addressed, Bob will take action. SAI's ability to meet and exceed expectations is dependent on honest client feedback. SAI clients do not have to deal with any bureaucracy within SAI's organization. At the end of a project, the CPM will request a debriefing to assess the client's satisfaction of our service. SAI takes seriously suggestions, welcomes constructive criticism, and recommendations that their clients offer.

Schedules and Milestones

The SAI Team will address the contractor's schedule and other associated work by any other entities on a daily basis. Thorough knowledge of the project details and complexities will be essential to understanding the schedule and the potential impacts of any schedule variance. Before work begins, Greg Smith the Construction Manager, will conduct a thorough review of the plans and specs, the regulatory and oversight requirements, and permit issues that were identified during the planning and design process. If any errors and omission are discovered, they will need to be addressed, resolved and remediated. This up-front work is critical to heading off issues before they become problems, particularly to the schedule.

Keeping the contractor on schedule during the course of the work will be the responsibility of the full SAI Team. SAI Construction Managers and inspectors have extensive experience with this type of planned work and scope, and their understanding of the work, their experience with similar projects, and their ability to anticipate potential pitfalls and delays will be critical in keeping the contractor on time and budget.



Detailed Work Plan

Throughout the project, at the weekly meetings, and in between the meetings, if necessary, the schedule will be reviewed and agreed upon by both the SAI Team and the contractor. Any slip in schedule will be addressed immediately and solutions will be discussed. The SAI Team philosophy is to work with the contractor, not against them, to get the job done. Of course, the responsibility of the SAI Team is to make sure that the project is built according to the plans and specs, and done safely and on time, but the way this is done is equally as critical. The SAI Team is there to facilitate, not simply police.

PLANNING FOR THE WORK

It is expected that the critical path of the project will likely include the following activities: construction of the pool building, the installation of the pool mechanical equipment and the pool plaster. In that the construction of these elements are critical to the completion of the project the demolition permit, building permit, the health department permit, and the fire department permit for the pool and pool building should be in place prior to award of the Contract to expedite construction. Otherwise, obtaining these permits needs to be the top priority.

SAI will work with the City, the contractor, the Landscape Architect and the GVCC to schedule a preconstruction conference within 10 days of award of the contract in accordance with Specification Sections 4-1.08 and 8-1.04. SAI will work with the contractor to have them provide a preliminary construction schedule at the preconstruction conference that includes GVCC work items as outlined in specification section 4-1.08. The preliminary schedule will also include a procurement schedule that includes all long lead items. The electrical equipment, the pool mechanical equipment and door and window frames are items that are likely to be long lead items. Understanding of the durations of the GVCC tree removal and stump removal activities will be an important element of developing the baseline schedule.

PROJECT SCOPE

The project includes renovation of an existing park and swimming pool including: new pool building, pool equipment, pool area fencing, and various other pool related improvements, parking lot improvements, new picnic shelters, new ballfield, new play area, new restroom, basketball courts, futsal court, renovated soccer fields, walkway replacement and new concrete walkways, landscaping, irrigation system modification, and path lighting.

Unforeseen conditions of the subsurface court materials, the unknown condition of existing pool piping to be reused, existing soil conditions that include expansive clay soils, and unknown existing



Detailed Work Plan

underground utilities present the risk of delays to the project. SAI will work closely with the City and the Contractor to resolve any issues regarding unforeseen conditions as they are discovered on the project.

Close coordination between the Contractor and the public utilities providing service to the project will be critical to a timely completion of the project. SAI will coordinate with the contractor, the City and the utility company to have utilities installed as needed to meet the project schedule.

SAI will work closely with the Contractor and the GVCC to ensure that the GVCC tree removal, stump removal, tree planting and the installation of site furnishings is allowed adequate time to be properly completed without adversely impacting the project schedule.

SCOPE OF WORK

Contract Administration / Document Control

Accurate and up-to-date records are critical. The SAI Team proposes to utilize a web-based construction management software Virtual Project Manager (VPM) which all stake holders can access. This software is used to track submittals, RFI, correspondence, and transmittals. SAI utilizes VPM to produce daily diary reports including labor records, and photographic records, of the work. Electronic project files are produced utilizing the Cal Trans category filing system. The SAI Team members have had project records audited by oversight and regulatory agencies and have successfully passed those audits. SAI uses the VPM tool to produce a weekly summary of past and upcoming work, events and issues keeping all stake holders up to date and on task.

The specific proposed scope of work for the project will meet the listed scope in the RFP and these items will not be reiterated. The construction administration and inspection services that the SAI Team will provide will comply with the City of Stockton's needs and requirements.

Documentation of Pre-Construction Conditions

The job site, surrounding area, properties, and adjacent features will be thoroughly photographed and video recorded prior to any construction work.

Pictures can be of great service in the event of a third-party claim that involves destruction or damage of existing conditions.

The photographs will be logged and documented in the job records with easily understandable titles, location, date stamp, and the direction the photograph was taken. SAI performs this work alongside the contractor so there is agreement as to what is documented.

Meetings (Pre-construction, Progress, Safety, etc.)

The primary purpose of the pre-construction meeting is to establish relationships, encourage open and honest lines of communication and to communicate the general partnering philosophy of the City of Stockton. The meeting will include an overview of the requirements of the contract. Including the delivery of required submittals from the contractor. It is a good idea to go through the plans and special provisions in an orderly and concise manner and to briefly discuss the unique features and requirements of the work.

SAI will conduct weekly progress meetings to discuss project issues, safety, stormwater compliance, review outstanding submittals, RFI's, Potential Change Orders (PCO's), and the progress schedule. SAI will prepare and distribute the meeting minutes to all participants prior to the next meeting. Progress Meetings are an effective tool in keeping the team focused on the critical issues and resolving them as soon as possible. As issues arise during construction, SAI will address them as quickly as possible. Meetings will be scheduled in the field with all appropriate team members to resolve these issues with minimal impact to the project.

Safety is an issue that cannot be over emphasized. Safety always comes first. Safety must be well planned and documented and a constant focus on the site for the duration of the work. SAI will work with the contractor to ensure the site is secure and protected from the public.

Schedule Review

SAI will review the contractor's baseline schedule to determine that the contract start date, the duration of the contract, and the contract end date are accurate.

Detailed Work Plan

The reviewer will ensure only one critical path is shown and that near critical activities are kept to a minimum. The review will check that all relevant activities are included with reasonable durations and correct logic. The contractor's monthly updates will be reviewed for accuracy with as-built conditions in the field. If the contractor falls behind schedule, SAI will request a recovery schedule and work with the contractor to get back on schedule. SAI considers this task significant when analyzing delay claims and determining if the critical path was impacted warranting a time extension.

Cost Control and Monthly Progress Payments

SAI utilizes logs to track all Potential Change Orders (PCO's), Contract Change Orders (CCO's), and Claims. SAI will review these logs with the project team at each progress meeting to help ensure the team is accountable and responsible for their action items.

SAI will verify all work completed with the contractor each month. Each bid item / schedule of values will be tracked each month using quantity bid item estimate forms. SAI will process all Progress Payments timely.

All cost accounting records shall be maintained in accordance with the City of Stockton procedures. All extra work paid at force account will be verified and approved each day. SAI will sign and verify the contractor's daily extra work reports and only pay for what has been authorized.

RFI's/Contract Change Order/Extra Work/Claims

SAI will manage and respond to all correspondence, including Request for Information (RFI's) submitted by the contractor, in a timely manner, usually within five (5) days. SAI will work closely with the designer to provide a timely response. It's important that all issues are resolved as soon as practical. All pertinent correspondence will be discussed with the City of Stockton's PM and Inspector prior to a response being sent to the contractor. SAI understands the importance of keeping the City abreast of all issues pertaining to cost, claims, delays, and design changes. SAI will make recommendations to the City prior to taking any action to ensure that the City's position is properly

represented. SAI will then proceed accordingly with completing the required documentation. In addition, SAI will meet with the contractor and the City of Stockton as necessary to resolve any outstanding issues and claims. It is SAI's intent to resolve all issues as they arise. However, we understand that every issue is different and may not be able to be resolved until the project has been completed. potential change orders and claims, if any, will be included with SAI's weekly report to the City.

Submittals and Clarifications

SAI will prepare and distribute a list of required submittals per the project specifications for the City's review no later than 10 days after award of the Contract. They will track and log all submittals from the contractor. An initial review will be performed and the submittal may be distributed to the appropriate party for review (i.e. the City, Design Engineer).

Many times, SAI will review submittals that are appropriate such as SWPPP, construction schedules, materials (Class 2 base, AC, concrete), etc. SAI will review the submittal log at each progress meeting and will be proactive in verifying the submittals are reviewed and returned to the Contractor within the specified time required in the specifications.

Field Inspection

The SAI Team will perform daily quality assurance inspections to check that the contractor is performing the work in accordance with plans and specifications. The field inspector will be proactive and timely with inspections to minimize delays to the project.

SAI will prepare Daily Inspection Reports which include, but are not limited to, labor, equipment used or idle, construction activities performed, weather conditions, pertinent discussions, and unforeseen conditions or issues. SAI understands that the Daily Inspection Report is one of the most valuable tools to document the work and to defend against claims. It must be professional, and factually correct. These inspection reports will be produced in VPM.

Detailed Work Plan

Information contained in Daily Reports you will receive from Construction Manager, Greg Smith

- The project name, contract, or project number
- The report number, the date, the day of the week
- A summary of the work performed
- The weather
- A list of visitors to the site
- The controlling item of work as included in the submitted construction schedule.
- The labor utilized on the work including the name of the trade's person, classification, the hours worked on each item of work and the contractor or subcontractor they worked for.
- A complete description of the work performed broken down by subcontractor.
- Equipment on site, the unique number identifying that equipment, the manufacture and model of the equipment, the work that the equipment was utilized for or a statement that the equipment was idle.
- Documentation of any work performed on a time and material basis.
- Pertinent conversations with the contractor.
- Materials used or delivered to the site.
- Bid item quantities completed.
- Any work installed that is not acceptable or in need of repair or replacement.
- Damage to existing improvements.
- Documentation of Storm Water Protection in place, traffic control, and safety
- Photo documentation to support the above

Samples of the daily diaries generated for the Rancho Cordova Recreation and Parks District using our electronic document system, VPM, are located on pages 26.

SAI ADVANTAGE**Local Office**

SAI's local office is in the City of Stockton and is less than 10 minutes from the jobsite. This allows SAI to respond to issues timely and resolve and minimize impacts and potential delays.

Flexibility

SAI is currently working for City of Stockton on several projects in the area. This allows Greg and Neil Mathiesen to work together across several projects. This will also provide substantial flexibility on project budget.

Relationships

Since 2019, SAI has been working with the City of Stockton beginning with Miner Avenue and continuing with our On-Call for Construction Inspection Services. Project Manager, Bob LoRusso, PE, is extremely knowledgeable with the City's engineering and inspection expectations, policies, and procedures.

Experience

SAI's key staff, Bob and Greg, have performed these exact services for very similar projects. Our most relevant experience is the recently completed Cordova Pool Replacement and Facility Improvements project which was managed by Greg Smith and supported by Bob LoRusso.

SAI encourage you to read about that experience in more detail on page 28 and contact our references to hear how we can provide the same value to your McKinley Park Renovation project.

INFORMATION MANAGEMENT SYSTEMS

Tracking Funding Sources

Construction administration and document control are essential to a successful project and to minimize additional costs and claims, especially when there are multiple funding sources for a project. The Virtual Project Manager (VPM) is a document control system that tracks project correspondence, RFI's, Submittals, Change Orders, Potential Change Orders, Progress Payments, and Punch List/Project Closeout as well as inspector daily reports.

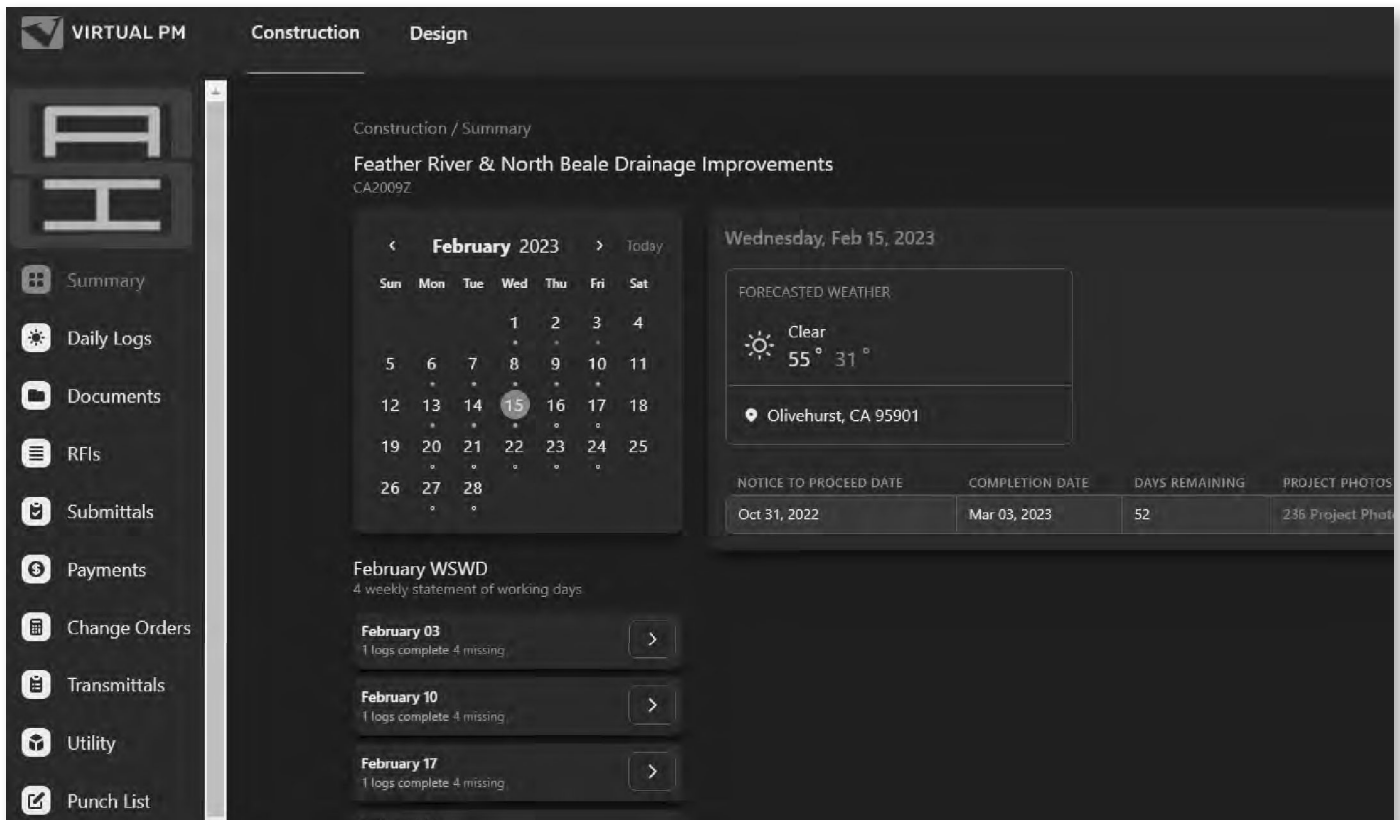
All Team Members, including the City of Stockton, contractor, and designer, will have access to the VPM 24/7, depending on access criteria, and can get up-to-date project information. Bob LoRusso was responsible for customizing the VPM for a local agency client to administer construction projects and reduce the number of hard copy files and paper. SAI has used VPM on more than 40 Capital Improvement Projects (CIP) and the file structure has been successfully audited and is in accordance with Caltrans Local Assistance Procedures Manual.

Another feature and benefit of VPM is the ability to export all the project documents into a universal file format (ISO). This reduces the number of hard copies required at project closeout. The ISO file is user-friendly, easy to access (no separate program or login required) and provides an efficient method for viewing and archiving your documents.

SAI is currently using VPM with the City of Sacramento on the HSIP Improvement Projects.

Monthly Budget Summaries

SAI understands the importance of tracking the construction budget throughout the duration of the project. This allows the City PM to manage funding and identify issues early on. The SAI team will provide a Monthly Budget Summary showing bid item quantities to date that are over or underbid quantity, Potential Change Orders, Change Orders, potential claims, and contingency. This budget summary has been a great way to forecast project budgets and allows the City PM to mitigate funding issues timely.



Detailed Work Plan



SAI also uses CT-Tracker, a cloud-based Local Assistance Procedures Manual compliance tool. Specifically, SAI uses the Resident Engineer (RE) Diary feature in the software to streamline the data entry and generation of RE daily diaries that are filed under Category 45 of the Caltrans Filing System. This helps our Resident Engineers save time compared to juggling Word documents, which is the process most REs use. CT-Tracker handles formatting and outputting Caltrans-accepted RE Diaries in pdf format that are ready for paper or digital filing.

In addition to the VPM platform described in the previous section, SAI utilizes two other useful software platforms when managing a construction project. Dropbox is used to manage all internal project files and provides additional coverage with cloud sync and backup, as well as previous version recovery. Plangrid is used to track plan revisions and document issues as they arise in the field.



The entire SAI staff will utilize Apple iPad's with cellular service to provide hotspots for file access and real-time updates while in the field.

SAMPLE DAILY DIARIES



Salaber Associates, Inc.

Cordova Community Pool Replacement Project
DAILY LOG REPORT
Tuesday, Nov 03 2020

WORKING DAY TYPE Working Day	WORKING DAYS REMAINING 163
LAST UPDATED Nov 03 2020 12:35 pm	LAST UPDATED BY Greg Smith
WEATHER	78°H 48°L ☀️ Mostly Sunny Rancho Cordova, CA 95670
SUMMARY OF WORK	
Stoney Masonry continued to install CMU block for the retaining walls. T&B concrete continue to install pool deck drains. Alessandro Electric continued to install light pole bases. Dutch Contracting continued to grade for sub-grade around the Activity Pool area. - Greg Smith, Nov 03 2020, 12:32pm	
NEXT BUSINESS DAY	
VISITOR LOG	
Inspector's Comments Rob Smith was notified that closed header blocks are required at doorways Rob Stated the masons will provide closed header blocks at openings.	
SAFETY OBSERVATIONS/CONCERNS	
One of Stoney Masonry's workers was not wearing a hard hat I advised Rob Smith and he asked the mason to wear a hard hat while on site. The worker complied with the request. - Greg Smith, Nov 03 2020, 12:35pm	
TRADES/SUBCONTRACTORS/AREAS WORKED	
RESIDENT ENGINEER REVIEW	

LABOR:					
NAME	CONTRACTOR	CLASSIFICATION	BID ITEM #	HRS:MINS	RATE/HR
Buongiarno, KC	Stoney Masonry	Superintendent	0000000000	8:00	0.00
Mclarney, Dennis	Stoney Masonry	Superintendent	0000000000	8:00	0.00
Feraire, Manuel	T&B Concrete	Carpenter	0000000000	8:00	0.00
Bevavides, Efrain	T&B Concrete	Superintendent	0000000000	8:00	0.00

Detailed Work Plan

Blackwell, Lewis	Harrison Drywall	Carpenter	0000000000	8:00	0.00
Meza, Isaiae	Harrison Drywall	Carpenter	0000000000	8:00	0.00
Gladin, Ron	Marquee Fire Sprinklers	Pipe Fitter	0000000000	8:00	0.00
Meadows, marty	WWF Contractors/Plumbing	Plumber	0000000000	8:00	0.00
Hangley, Glenn	Crusader Fence	Laborer	0000000000	8:00	0.00
Reyes, Coco	Harrison Drywall	Carpenter	0000000000	8:00	0.00
Lopez, Jesus	Harrison Drywall	Carpenter	0000000000	8:00	0.00
Gomez, Richard	SW Allen	Carpenter	0000000000	8:00	0.00
Dehart, Clay	SW Allen	Carpenter	0000000000	8:00	0.00
Spaller, Vic	McCumbers Glass	Glazier	0000000000	8:00	0.00
McCumber, Jeff	McCumbers Glass	Glazier	0000000000	8:00	0.00
Kennessy, Tim	McCumbers Glass	Glazier	0000000000	8:00	0.00
Hudson, Dan	Hudson Doors	Carpenter	0000000000	8:00	0.00
Leonardo, Jake	Hudson Doors	Carpenter	0000000000	8:00	0.00
martell, logan	WWF Contractors/Plumbing	Plumber	0000000000	8:00	0.00
Sullivan, Justin	T&B Concrete	Laborer	0000000000	8:00	0.00
Wolf, Shon	T&B Concrete	Laborer	0000000000	8:00	0.00
Hall, Mike	Dutch Contracting	Operator	0000000000	8:00	0.00
Solorio, Miguel	Dutch Contracting	Operator	0000000000	8:00	0.00
Sanchez, Ario	Dutch Contracting	Laborer	0000000000	8:00	0.00

ATTACHMENTS:



Salaber Associates, Inc.

City of Stockton, McKinley Park Renovation
Construction Management Services Cost Proposal Estimate

Based on 240 working days. Assume NTP in April 2024

Stage / Phase & Description	Work Days	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Notes
Pre-Construction Activities	20																
Construction Activities	240																
Project Close-Out	20																

Personnel	Role	DBE	Firm	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Total Hrs	Hrly Rate	Total Cost	
Bob LoRusso, PE	PM/Resident Engineer		SAI	10	20	20	20	20	20	20	20	20	20	20	20	20	20	10	280	\$235.00	\$65,800	
Greg Smith	Construction Manager/Inspector		SAI	60	168	168	168	168	168	168	168	168	168	168	168	168	168	60	2304	\$180.00	\$414,720	
Chase Alexander	Office Engineer/Inspector		SAI	20	84	84	84	84	84	84	84	84	84	84	84	84	84	30	1142	\$165.00	\$188,430	
Neil Matheison	Inspector (As-needed)		SAI																	\$175.00	As Needed	
Geocon	Materials Sampling/Testing/Special Inspection		GEO																		Allowance	\$62,920
CASI	Administration/Labor Compliance	X	CASI	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	150	\$150.00	\$22,500	
Equivalent full-time persons per month = total hours / 168 hours				0.6	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	0.7	1.5		\$754,370	

Average staffing per month for the entire project.

McKinley Park Renovation Engineer's Estimate: \$8,000,000

Construction Management Costs as a % of Construction Estimate: 9.4%

Notes:

- Hourly rates are all inclusive. They include all vehicle and vehicle expenses, standard inspection and safety equipment, cell phones, computers, printers, and other small incidentals. All personnel are paid, at a minimum, the Base Hourly Rate and Total Hourly Rate of the General Prevailing Wage Determination made by the Director of Industrial Relations Pursuant to California Labor Code for Commercial, Building, Highway, Heavy Construction and Dredging Projects.
- Overtime Rates: Overtime is paid per State requirements, which generally requires payment of overtime (1.5 times regular hourly rate) to non-exempt employees for any hours in excess of eight (8) hours and less than twelve (12) hours per day and on Saturdays, and double time for any hours in excess of twelve (12) hours per day and work on Sunday or holidays. Exempt employees (generally licensed professionals) who work on the job site are generally paid straight time hourly rates for overtime. This results in the following billable rates for overtime: licensed Resident Engineers and Structure Representatives are the same rate as straight time, all other personnel are billed at the straight time billable hourly rate plus 25% (ie. Construction Inspector (Group 2) = \$165 x 1.25 = \$206) for OT that is 1.5x, and plus 50% (\$165 x 1.5 = \$248) for DT that is 2.0x. Second Shift rates add \$15/hour on ST Rates for non-exempt employees, plus % for OT. Overtime costs have not been included in this cost estimate.
- No sub-consultant markup for administration and management has been included in their hourly rates.
- All costs for field office space, field office equipment, and technical field equipment for sole use on the project will be billed and reimbursed at the actual lease/rental rates, with no mark-up.

Insurance Requirements for Professional Services
Construction Management Services for McKinley Park Renovation

Consultant shall procure and maintain for the duration of the contract 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 Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office 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 Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit 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 Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant 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.

Other Insurance Provisions

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

Additional Insured Status

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. 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 if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is 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.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and 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.

Umbrella or Excess Policy

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.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this

provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

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. 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.

Acceptability of Insurers

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

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

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

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

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 special 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

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

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

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

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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 2 of 14
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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
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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.

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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)

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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

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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.

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- 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

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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

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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.

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- 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

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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

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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

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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)

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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

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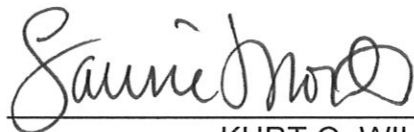
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

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

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