

## CONTRACT FOR SERVICES

THIS CONTRACT is entered into this \_\_\_ day of \_\_\_\_\_ 2016, between the CITY OF STOCKTON, a municipal corporation ("CITY), and **FIRST SERVE PRODUCTIONS, INC.**, a **STATE OF CALIFORNIA CORPORATION**, with a business address at **451 STARMONT COURT, DANVILLE, CA 94526**, hereinafter called "CONTRACTOR." THIS CONTRACT is for the **COURT RESURFACING PROJECT NO. O&M 16-039**, 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 **Exhibit A (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 **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B (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 receipt and approval of CONTRACTOR'S invoice for completed work. Total compensation for services and reimbursement for costs shall not exceed **\$124,383.00** or as otherwise mutually agreed to in a Contract Change Order.

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**Court Resurfacing Project, O&M 16-039**  
**May 15, 2016**

CITY agrees: To pay CONTRACTOR for the work herein in one lump sum upon acceptance of the work by the Project Manager and receipt of invoice.

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.

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. SCHEDULE AND TERM.** CONTRACTOR shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit A**, which is attached to this Contract and incorporated by this reference. This contract shall commence on the date written above and shall expire **70 days from the Notice to Proceed**, unless extended by mutual agreement through the issuance of a Contract Change Order.

**4. CHANGE ORDERS.** 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 change order 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 change order will not become effective until approved by the City Manager and/or the City Council.

**5. 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.

**6. 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.

**7. 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.

**8. 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.

**9. 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.

**10. 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 shall indemnify, protect, defend with counsel approved by CITY and at CONTRACTOR'S sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents, 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 CITY, its Mayor, Council, officials, representatives, agents 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.

**11. 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 C** which is attached to this contract and incorporated by this reference, and shall otherwise comply with the other provisions of **Exhibit C**. 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 C**, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.12 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Resolution No. 03-0707, effective December 1, 2003.

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.

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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.

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

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**13. 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:	First Serve Productions, Inc.	To City:	Public Works Director
	451 Starmont Court		City of Stockton
	Danville, CA 94526		22 E. Weber Ave., Rm. 301
			Stockton, CA 95202

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

a. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095, attached to this Contract as **Exhibit D** and incorporated here to, the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50% 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.

b. 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.

c. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (Exhibit E). 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.

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d. 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.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1770-1784>

e. PREVAILING WAGE RATES

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 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. 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>. 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. **PAYROLL RECORDS** - 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. **APPRENTICESHIP STANDARDS** - 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.

**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  
**Court Resurfacing Project, O&M 16-039**  
**May 15, 2016**

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, Northern 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, Northern 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.

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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**

**FIRST SERVE PRODUCTIONS, INC.**

By: \_\_\_\_\_  
KURT O. WILSON  
CITY MANAGER

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

ATTEST:

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

By: \_\_\_\_\_  
BONNIE PAIGE  
CITY CLERK

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

APPROVED AS TO FORM:

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

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

**SECTION 1 - SPECIFICATIONS AND PLANS**

**1.1 Specifications**

The work described herein shall be done in accordance with the current City of Stockton, Department of Public Works Standard Specifications and Plans and these special provisions.

In case of conflict between these Special Provisions and the City Standard Specifications and Plans, the Special Provisions shall take precedence.

**1.2 Terms and Definitions**

Wherever in the Standard Specifications, Special Provisions, Notice to Contractors, Proposal, Contract, or other contract documents the following terms are used, the intent and meaning shall be interpreted as follows:

City, Owner, or Project Manager	City of Stockton
Director	Director of Public Works, City of Stockton
Standard Specifications	Latest City of Stockton, Standard Plans and Specifications, and any amendments and revisions thereto.
Department	Department of Public Works, City of Stockton

**SECTION 2 – PROPOSAL SUBMISSION**

**2.1 Questions and Answers**

All questions/request for clarification regarding this bid shall be directed to Susan Christy via email at [susan.christy@stocktonca.gov](mailto:susan.christy@stocktonca.gov) with the subject line “O&M-16-039.”

All questions/requests for clarification must be received no less than 10 days prior to submittal due date. Responses to questions shall be posted on the City’s website under “Questions & Answers” on the Bid Flash posting for this project no less than five days prior to the bid opening.

**Understanding of Conditions**

Bidders will be required to carefully examine these special provisions and attachments to judge for themselves as to the nature of the work to be done and the general conditions relative thereto and the submission of a proposal hereunder shall be considered prima-facie evidence that the bidder has made the necessary investigation and is satisfied with respect to the conditions to be encountered, the character, quantity and quality of the work performed. For work to be completed, contractors are advised to visit and review the job site prior to the submission of their bid.

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

Bidders must be thoroughly competent and capable of satisfactorily performing the work covered by the proposal, and when requested, shall furnish such statements relative to previous experience on similar work, the plan or procedure proposed, the organization and the equipment available for the contemplated work, and any other as may be deemed necessary by the Project Manager in determining such competence and capability.

It shall be understood that the Contractor shall be required to perform and complete the proposed work in a thorough and workmanlike manner, and to furnish and provide in connection therewith all necessary labor, tools, implements, equipment, materials and supplies. The contractor is responsible to take all necessary precautions and use best practices in the industry to perform all work require completing the project. All work described herein shall be subject to review and approval by the Project Manager.

**SECTIONS 3 - BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

**3.1 Beginning of Work**

At no time shall construction begin without a fully executed contract and approved insurance on file.

The Contractor shall diligently prosecute all work items to completion.

Full compensation for any additional costs occasioned by compliance with the provisions in this section shall be considered as included in the prices paid for the various contract items of work, and no additional work compensation will be allowed therefore.

**3.2 Time of Completion**

Upon approval of the contract or upon issuance of a purchase order for said work and the furnishing of said materials, the performance of said work and the furnishing of said materials shall be completed within 70 working days of commencement.

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 of Stockton the actual cost of engineering, inspection, testing, superintendent, 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.

**3.3 Liquidated Damages**

Working days shall commence within fifteen (15) working days from the date the Project Manager provides a Notice to Proceed to the contractor. Full compensation for any costs required to comply with the provisions in this section shall be considered to be included in the prices paid for the various contract items of work, and no additional compensation will be allowed.

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

The Contractor shall pay liquidated damages to the City of Stockton in the amount of \$100 (one hundred dollars) per day for each working day that the work remains incomplete after the expiration of the contract working days specified in these special provisions.

**3.3 Contract Bonds**

The Contractor shall furnish in two (2) surety bonds, one performance bond guaranteeing the faithful performance of the work, and one labor and material bond securing the payment of laborers, mechanics or material or men employed on the work under contract. The surety which provides the bonds must be authorized by the Insurance Commissioner to transact business of insurance in California. All alterations, extensions of time, extra and additional work and other changes authorized by these specifications or any part of the contract shall be made without securing the consent of the surety or sureties on the contract bonds.

**SECTION 4 - GENERAL**

**4.1 Project Appearance**

The Contractor shall maintain a neat appearance to the work.

Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various contract items of work involved, and no additional compensation will be allowed therefore.

**4.2 Indemnification and Insurance**

Indemnification and Insurance shall conform to the requirements found in project bid documents.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various contract items of work involved, and no additional compensation will be allowed therefore.

**4.3 Increased or Decreased Quantities**

The 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 or to omit 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 or construction of the whole work contemplated, without adjustment in the unit price as bid. Section 4-1.03B, "Increase or Decreased Quantities", of the Standard Specifications, shall not apply.

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

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

City Council.

**4.4 Pre-Construction Meeting**

The City of Stockton Public Works Department will schedule a pre-construction meeting with the Contractor following award of the contract and prior to commencing work. The City will issue the Notice to Proceed following execution of the Contract. This meeting will be held in the City of Stockton, Public Works Department.

**4.5 Contractor Qualifications**

Contractor acknowledges it is an independent contractor and shall not for any purpose be deemed to be an employee, agent, or other representative of the City. Contractor shall not assign, sublet, transfer or otherwise substitute its interest in this work, or any of its obligations, without the prior written consent of the City.

Minimum Age Requirement: All employees of the Contractor must be a minimum of 18 years of age.

Conflict of Interest: The Contractor shall not employ any person who is an employee of the City if the employment of that person would create a conflict of interest.

Licensing: Contractor shall have a Class A General Engineering Contractor, Class C-12 Earthwork and Paving Contractors, or Class C-32 Parking and Highway Improvement Contractor license as issued by the Contractors State License Board of California.

Contractor must obtain a City of Stockton business license prior to starting work and must maintain a City of Stockton Business License throughout the contract period.

**4.6 Contractor Responsibilities**

The Contractor shall employ only workers who are competent and skilled for work under this contract. The City shall, throughout the life of the contract, have the right of reasonable rejection and/or approval of staff assigned to the work by the contractor. If the City representative rejects one of Contractor's staff, the Contractor must provide replacement staff satisfactory to the City at no additional cost to the City. If, in the opinion of the City, any Contractor employee who is incompetent, disorderly, refuses to perform in accordance with the contract specifications, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, shall be removed immediately from work under this contract upon request of the City.

No unauthorized person or persons not employees of the Contractor (i.e., spouse, children, brother, sister, friends, etc.) shall be allowed within the immediate work area during the performance of services under this contract.

Damage to Improvements: Contractor is responsible for any and all damage to any

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

improvements, which is a result of Contractor's actions. Contractor shall notify City within 24 hours of any damage to City amenities/improvements caused by Contractor. Contractor shall repair or replace any damaged improvement to the Public Works Representative/Project Manager's satisfaction at no cost to the City.

Safety: Contractor shall be solely responsible for the safety and welfare of all Contractor's personnel performing work under this contract. Contractor is solely responsible for advising and educating all personnel to the health hazards associated with this work prior to personnel commencing work under this contract.

It shall be the Contractor's responsibility for performing all work with the utmost concern for safety of both the workers and the public. Where necessary, Contractor shall barricade or temporarily close to the public those areas that are being serviced and be responsible for providing appropriate traffic control. No lane closures shall be allowed until the contractor has submitted and has obtained an approved Traffic Control Plan, to be approved by the City Traffic Engineer

Protection of Property: The Contractor shall take every precaution to protect all public and private property during the performance of this contract. Any damages caused by Contractor's personnel or equipment must be immediately reported to the City Representative. Contractor will be responsible for the costs to restore the damaged amenity to the condition existing before the damage or for replacement, as determined by City. City reserves the right to select or approve the person/company doing the repair and the materials used.

Upon completion of service at a site, Contractor is responsible for securing all areas.

Quality Assurance: Contractor shall have a quality assurance program that includes procedures that are required to assure full protection of work and materials.

Found Items: Contractor shall ensure that all items of possible personal or monetary value found by Contractor/Contractor's employees are turned in to the City representative.

Key Control: Contractor shall insure all keys and security codes issued to Contractor are not lost or misplaced and are not used by unauthorized persons. No keys issued to Contractor shall be duplicated. Contractor shall have a written key control program available upon request.

**4.7 Standards of Performance**

It is the intent of these specifications that all work is to be performed by Contractor's forces. Contractor shall obtain City approval before subcontracting any part of this work.

All Contractor's maintenance vehicles, or vehicles of those persons representing the Contractor, shall be in proper working order and in a good state of repair, and shall clearly present the Contractor's company name, address, and telephone number of

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

local office.

Contractor shall use equipment of the quality, size, and durability normally used in the industry for the performance of similar services. The City Representative may periodically inspect the Contractor's equipment to ensure its serviceability, safety and performance. Equipment determined not to be in compliance will be removed and replaced with suitable equipment.

Contractor is responsible for any and all damage to any improvements and landscaping which is a result of Contractor's actions. Contractor shall repair or replace any damaged improvement and landscaping to the City Representative's satisfaction at no cost to the City.

Contractor shall provide at their own risk, all labor, materials, supervision, tools, equipment, insurance, storage, transportation, hauling, dumping, proper protection and all other items needed, or as directed to perform the work described in these special provisions.

Contractor shall provide supervision of all work crews at all times while performing work under this contract. Personal supervision is not required provided that equipment or other means are provided that enables the work crews to communicate with the Contractor at all times. Each work crew shall have a designated person on the work site that has the authority to respond to inquiries from any citizens encountered during the course of work and/or the Public Works Director or Designee/s about work details and/or priorities. This designated person shall be able to accurately and effectively communicate any information essential to the operation of the organization.

Contractor shall employ a sufficient number of staff to ensure performance of the work described. All work shall be performed by experienced staff directly employed by the Contractor. The Contractor shall provide management and technical supervision through competent supervisors as required to implement modern methods and newly developed horticultural procedures. Contractor shall be responsible for the skills, methods, and actions of Contractor's employees and for all work.

All work shall be performed with the utmost concern for safety of both the workers and the public.

**4.8 Workmanship**

Contractor shall perform work contemplated herein in a good and workmanlike manner to the satisfaction of the Project Manager. The Contractor shall cooperate with the Project Manager to enable determination of contract compliance. The Public Works Representative/Project Manager, and/or the Public Works Director or Designee/s shall be the sole judge as to whether Contractor's work conforms to these specifications. If any work does not meet the standards specified, the Contractor will be responsible for correcting such deficiencies within five (5) working

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

days or as directed by the Project Manager. Corrections shall be at no additional cost to the City of Stockton.

Contractor acknowledges it is an independent contractor and shall not for any purpose be deemed to be an employee, agent, or other representative of the City. Contractor shall not assign, sublet, transfer or otherwise substitute its interest in this work, or any of its obligations, without the prior written consent of the City.

**4.9 Illness and Injury Prevention Program**

Contractor shall have an Illness and Injury Prevention Program. Contractor shall submit a copy of the Illness and Injury Prevention Program manual with the initial project schedule.

**4.10 Harassment Policy**

Contractor shall have a written policy that at a minimum prohibits harassment and discrimination in employment on the basis of race, religion, color, national origin, ancestry, disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute as consistent with state or federal law. The prohibition applies to all officers and employees of the Contractor and their interaction with City personnel and the members of the public encountered during the course of Contractor's work. Contractor's policy shall at a minimum be comparable to the City of Stockton City Manager Administrative Directive HR-15 Discrimination and Harassment Policy attached to the "Instructions to Bidders" document as **Exhibit 'B'**. Contractor shall submit a copy of their policy **with their bid**.

The policy shall apply to all aspects, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

All allegations of harassment shall be investigated promptly by the Contractor. If it is determined that harassment has occurred, Contractor is responsible to ensure remedial action is taken. Such action may include disciplinary actions up to and including termination. 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.

Contractor is responsible and shall ensure that any of Contractor's staff who has been determined to have retaliated against or participated in retaliating against any person who has brought forth, in good faith, a complaint of harassment, or any employee who retaliates against any person who participates in an investigation of any such complaint is disciplined, up to and including termination. 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.

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

**4.11 SUBMITTALS AND INSPECTIONS**

Within five (5) working days of receiving a Notice to Proceed from the City of Stockton, the contractor shall provide a schedule to the City representative indicating the proposed date for the start of work and the proposed starting location and order of locations. Contractor will not commence work until a work schedule is submitted. Should Contractor wish to later modify this schedule, a written request must be submitted to and approved by the City Representative prior to the revised schedule becoming effective.

The Public Works Representative will conduct regular inspections of Contractor's work. Contractor shall provide the Public Works Representative the following reports attached to the project billing:

- A) Report of any problems encountered.
- B) Waste disposal report submitted electronically in an Excel spreadsheet or other comparable program that is compatible with City software. Report shall include the amount of material, type of material and where material was disposed and shall include copies of the disposal tickets/receipts.
- C) Local Employment Ordinance Report

**SECTION 5 - MEASUREMENT AND PAYMENT**

**5.1 General**

Full compensation for performing the work in these Special Provisions shall be included in the prices paid for the various contract items of work, and no additional compensation will be allowed therefore.

**5.2 Payment**

It is intended that this work will be paid for in one (1) single payment upon completion and acceptance of the work. Work not performed will be deducted from Contractor's invoice according to the Bidding Schedule submitted with the Contractor's bid.

**SECTION 6 - DESCRIPTION OF WORK**

**6.1 Description of Work**

This project is to repair, resurface and stripe tennis and basketball courts at 13 locations. There are 13 tennis courts, 12 full basketball courts and six half basketball courts at these various locations. Courts have varying degrees of wear and surfaces.

The work to be performed consists of furnishing all labor, materials, tools,

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

transportation, supplies, equipment, appurtenances, fuel, and power, unless specifically excepted, necessary to repair, resurface, and repaint lines on sports courts at Baxter, Equinoa, Faklis, Fong, Iloilo, Long, Parma, Pitts, Shropshire, Smith, Unity and Weston Parks and at the Weston Ranch Unit 77 greenbelt basketball court between Manthey and McDougald. It is the goal of this project that all work and repairs be performed in such a manner as to provide safe play on these courts for the next several years.

All representations of the dimensions and surfacing of these areas are provided for reference only. Contractor is encouraged to visit each site prior to submitting bid.

Protection of In-Place Conditions: Protect adjacent surfaces and landscaping from contact with court surface coloring system. Any damage to surrounding park amenities and/or landscaping must be corrected prior to job completion.

The contractor will be required to provide an overall work schedule for this project and coordinate start of work at each site with the City so that maintenance staff can be aware of site work.

The work will consist of the following:

Contractor shall remove all tennis nets prior to the commencement of work and reinstall nets following completion of work to the satisfaction of the inspector.

Contractor is required to maintain adequate warning signs and barricades for the safety of the public and protection of the work.

Contractor must provide security fencing for un-fenced court areas to protect court surface during resurfacing and color. Work with visible footprints or other markings will not be accepted.

If game court fencing is removed to provide access for equipment and/or adjustment for clearance, it shall be reinstalled properly at no additional cost to the city.

All courts shall be blue and green when finished. For tennis: courts will be blue and border area shall be green. For basketball: court and border will be green with blue in the center circle and at the court free throw area.

On each court:

- A. Thoroughly clean all pavement/concrete cracks by sweeping, vacuuming, air blasting or spraying high pressure water. Immediately remove all debris from cleaning operations to include areas of surrounding pavement and fencing. Contractor shall dispose of all debris in an approved, licensed landfill. Disposal is not available on site.

**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

- B. Flood the courts and allow one hour for drainage to occur. Determine if any low points (birdbaths) exist. Any spots deeper than 1/8-inch shall be deemed patchable. Mark areas accordingly. Low spot/birdbath identification shall be the responsibility of the contractor and approved by the Public Works Project Manager assigned to this project. Flooding and rechecking of the court surface may be needed prior to proceeding with the color coating.
- C. Fill and level depressions greater than 1/8-inch with court patch binder per the manufacturer instructions and recommendations.
- D. Seal all cracks/patch all voids and apply court patch binder in thin layers per the manufacturer instructions/recommendations.
- E. Level all areas. Grind/sand any high spots that may cause a tripping hazards.
- F. Apply two coats of sand-filled acrylic emulsion resurfacer per the manufacturer instructions/recommendations.
- G. Apply three coats of full acrylic color. A light blue and green scheme shall be used.
- H. Layout and stripe courts with textured white paint in accordance with USTA and NCAA specifications, per the manufacturer instructions and recommendations.
- I. Contractor is responsible to ensure that courts are secure until ready for play.

Each park is listed separately on the bid sheet.

**6.2 Materials**

Materials shall be Plexipave Color Surfacing System or SportMaster Color Coating System or City-approved equal. Contractor is responsible for using materials that are appropriate for the type of surface being coated and following all manufacturer's suggested application instructions.

**6.3 Standards and Attachments**

- A. Attachment A, Baxter Park Map
- B. Attachment B, Equinoa Park Map
- C. Attachment C, Faklis Park Map

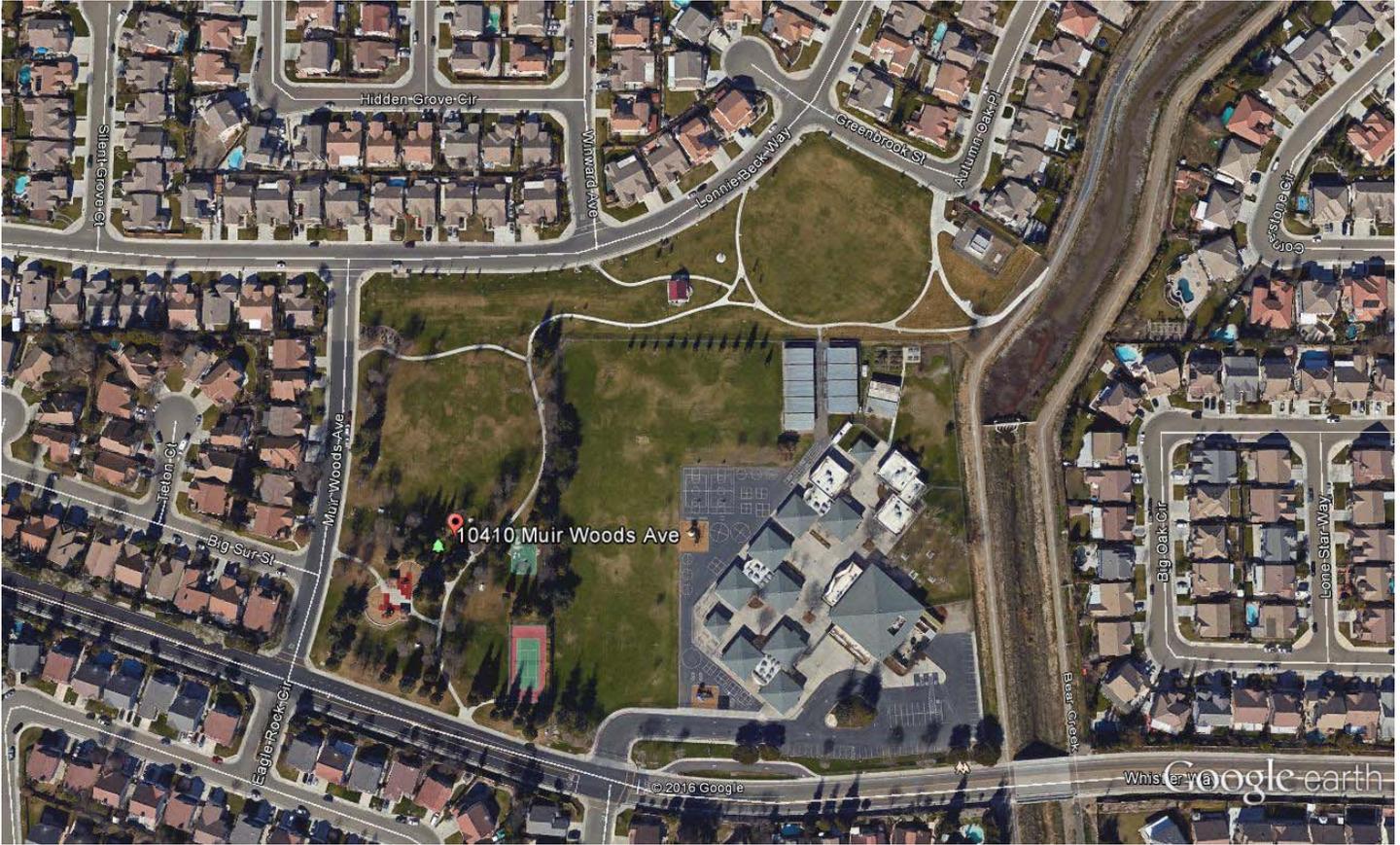
**SPECIFICATIONS FOR  
COURT RESURFACING, PROJECT NO. OM-16-039**

- D. Attachment D, Fong Park Map
- E. Attachment E, Iloilo Park Map
- F. Attachment F, Long Park Map
- G. Attachment G, Parma Park Map
- H. Attachment H, Pitts Park Map
- I. Attachment I, Shropshire Park Map
- J. Attachment J, Smith Park Map
- K. Attachment K, Unity Park Map
- L. Attachment L, Weston Park Map
- M. Attachment M, Unit 77 Weston Ranch Greenbelt

BAXTER PARK  
10410 MUIR WOODS AVE

ONE TENNIS COURT 2,800SF  
ONE BASKETBALL COURT 7,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth

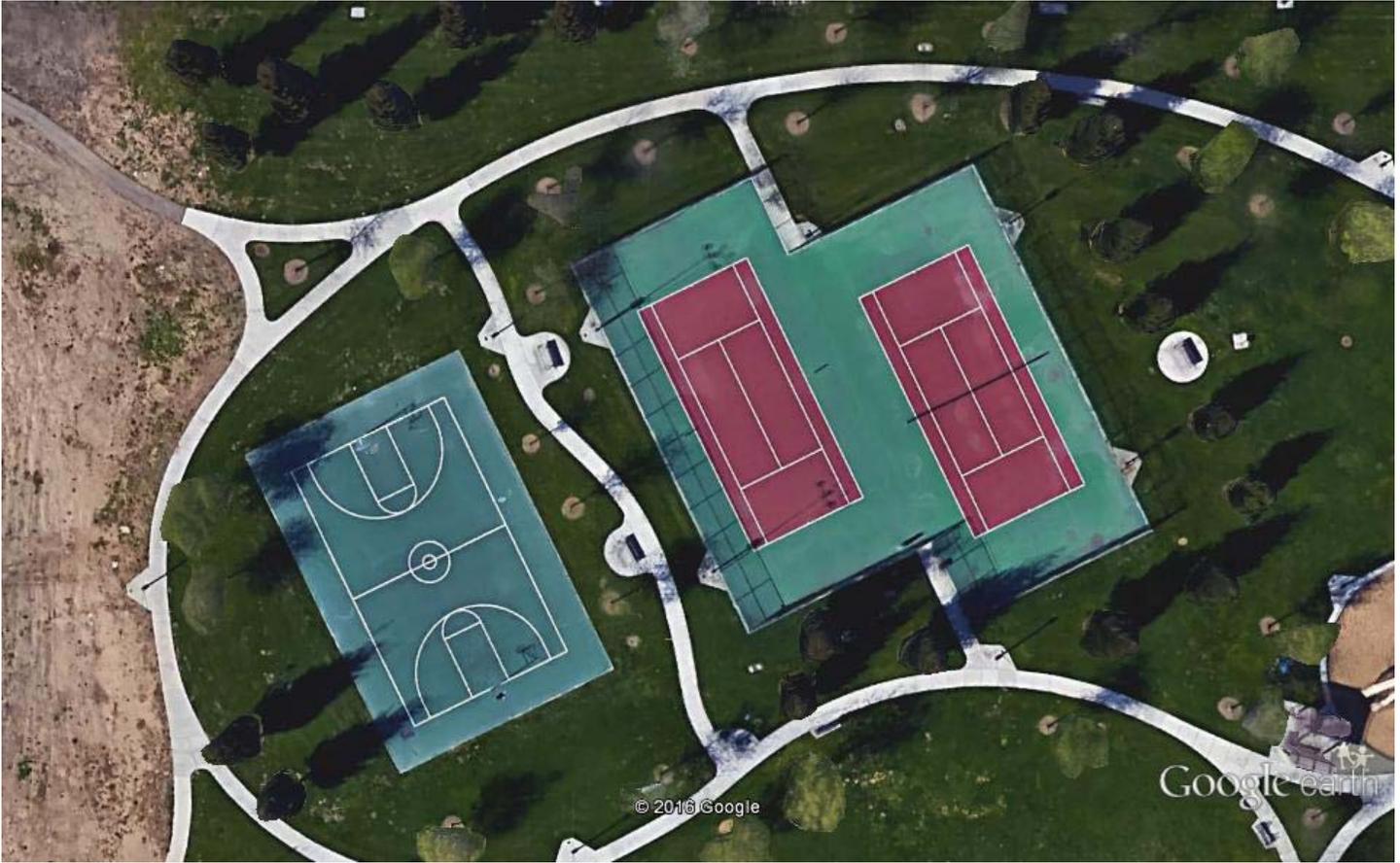
feet  
meters



EQUINOA PARK  
9499 GLACIER POINT DR

TWO TENNIS COURTS 13,750 SF  
ONE BASKETBALL COURT 7,200 SF

ATTACHMENT B  
EXHIBIT A



Google earth

feet  
meters



FAKLIS PARK  
5250 COSUMNES

TWO TENNIS COURTS 14,500 SF  
TWO BASKETBALL COURTS 9,940 SF

ATTACHMENT B  
EXHIBIT A



Google earth

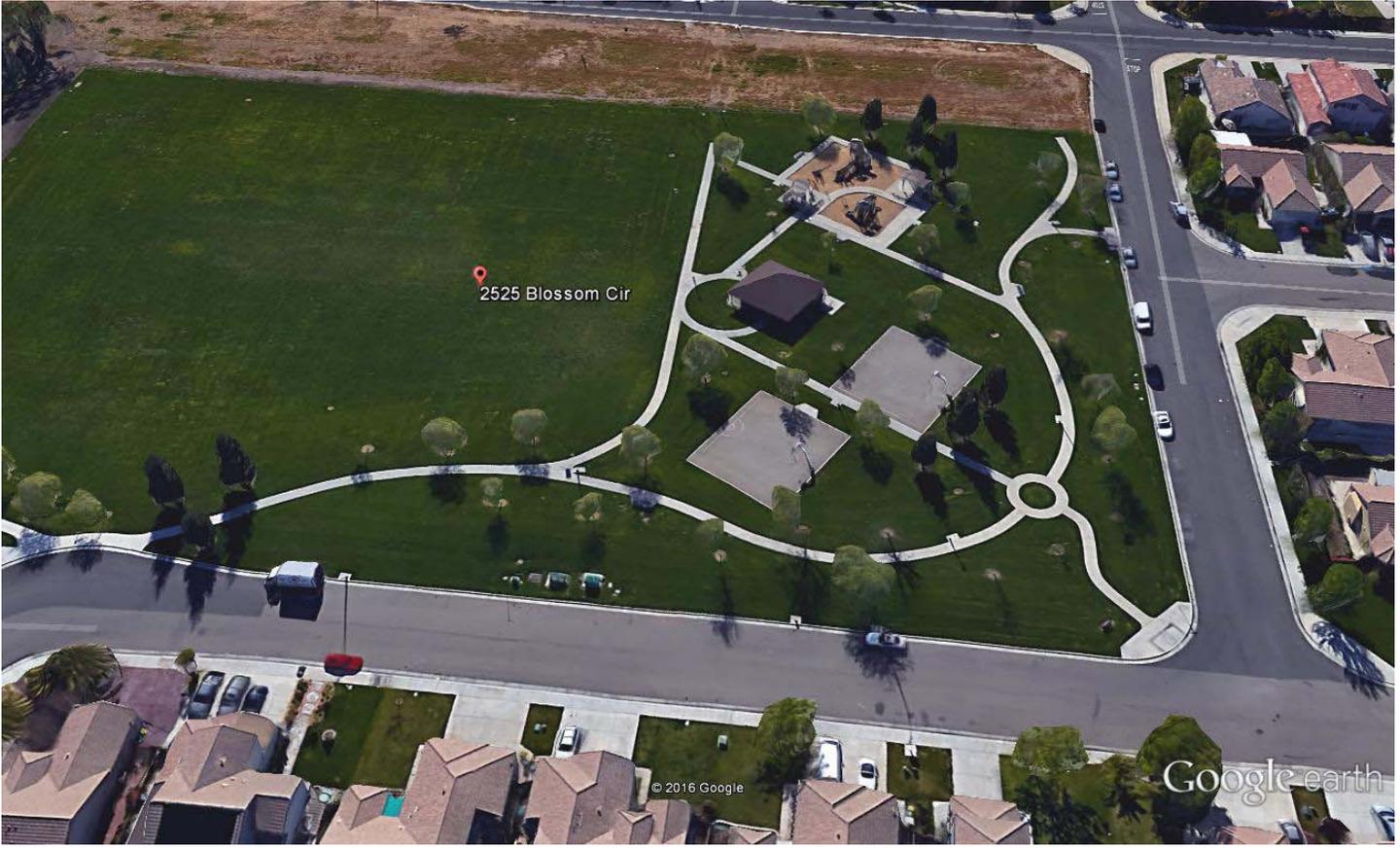
feet  
meters



FONG PARK  
2525 BLOSSOM CIRCLE

TWO HALF BASKETBALL COURTS  
5,100 SF

ATTACHMENT B  
EXHIBIT A



Google earth



ILOILO PARK

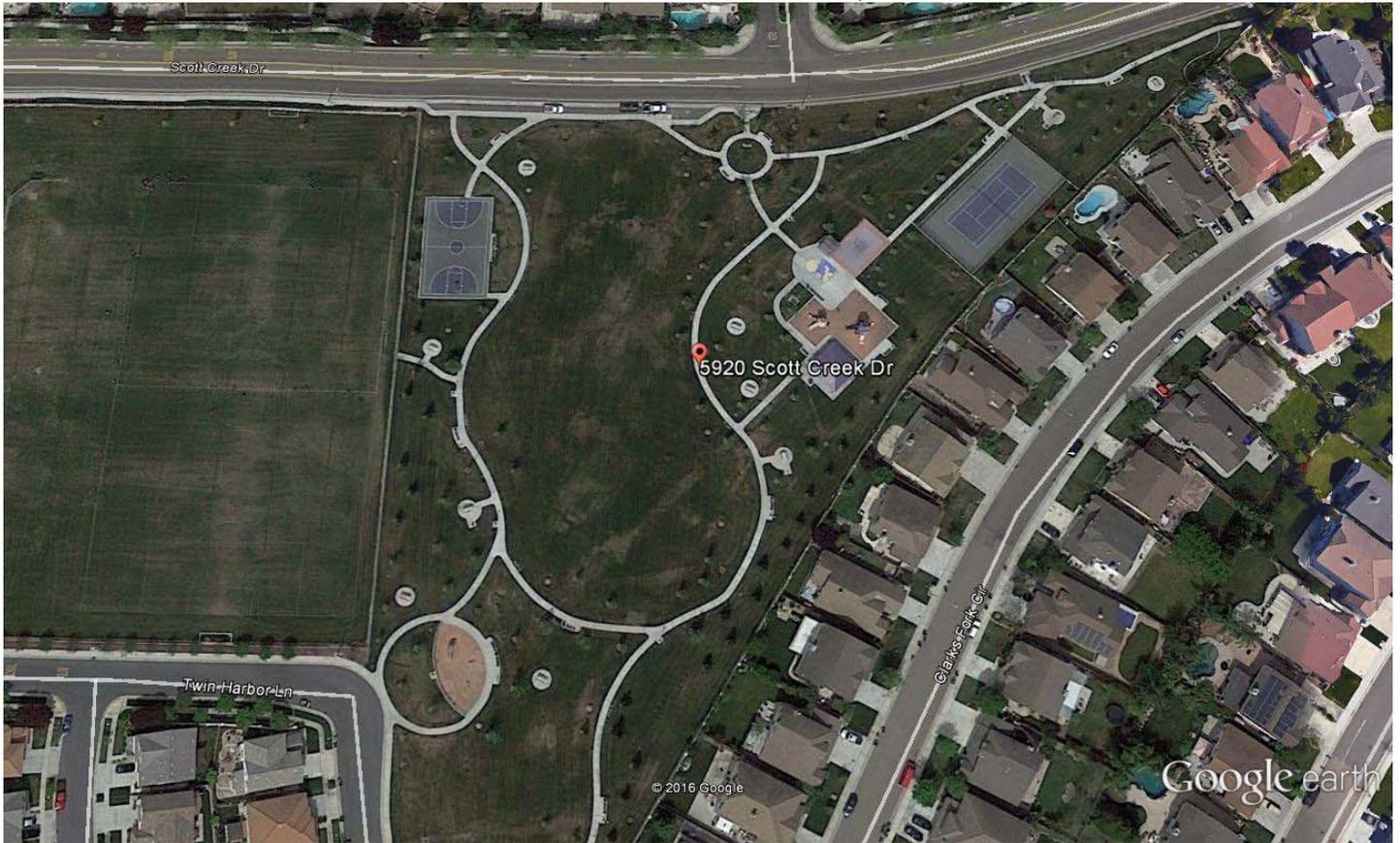
ONE TENNIS COURT 7,000 SF

ATTACHMENT B

5920 SCOTT CREEK DRIVE

ONE BASKETBALL COURT 5,000 SF

EXHIBIT A



Google earth

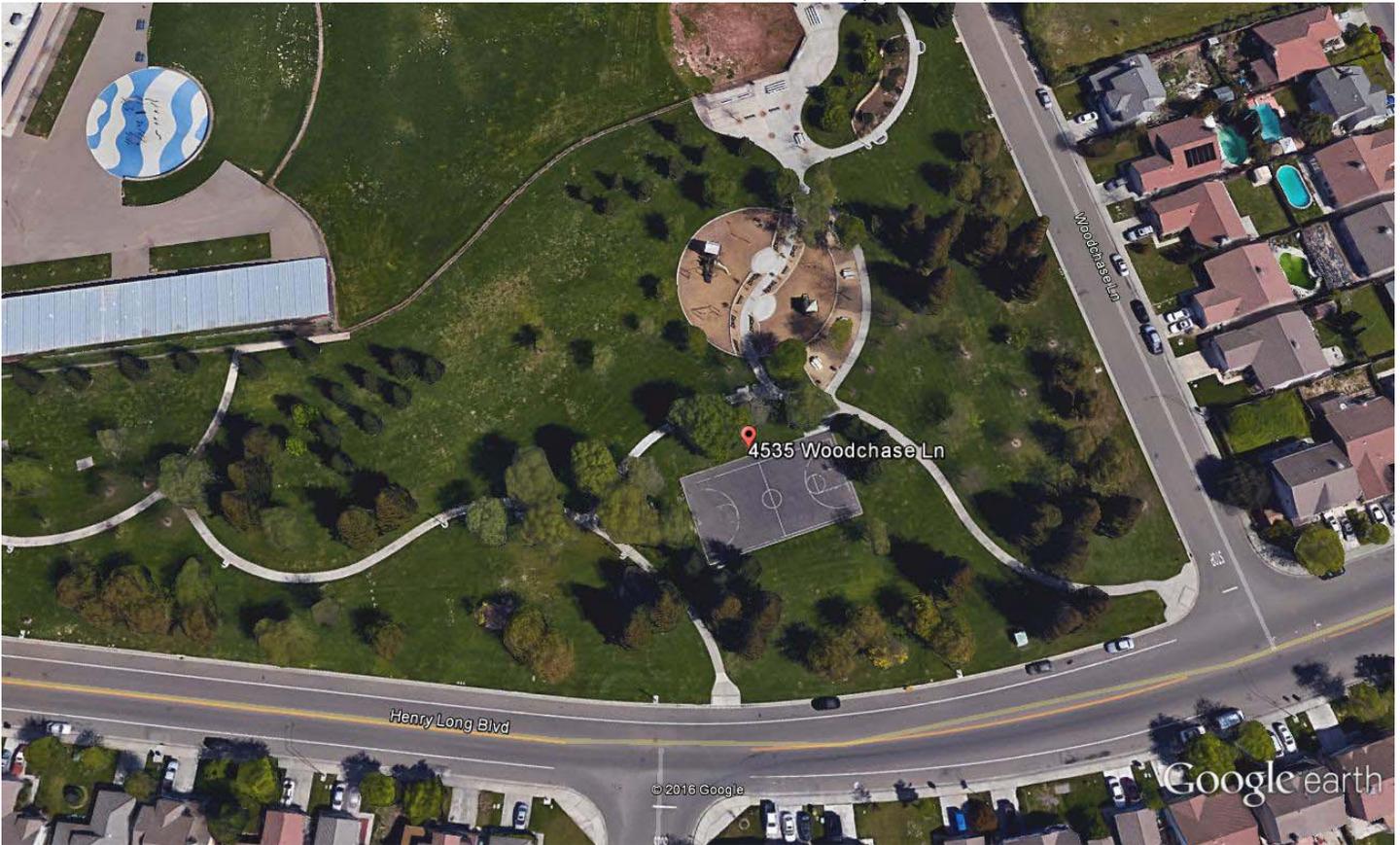
feet  
meters



LONG PARK

4535 WOODCHASE LANE ONE BASKETBALL COURT 5,500 SF

ATTACHMENT B  
EXHIBIT A



Google earth

feet  
meters



PARMA PARK  
9127 CHIANTI CIRCLE

ONE TENNIS COURT 7,000 SF  
ONE BASKETBALL COURT 5,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth

feet  
meters



PITTS PARK

510 VILLA POINT DRIVE ONE HALF BASKETBALL COURT - 3,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth

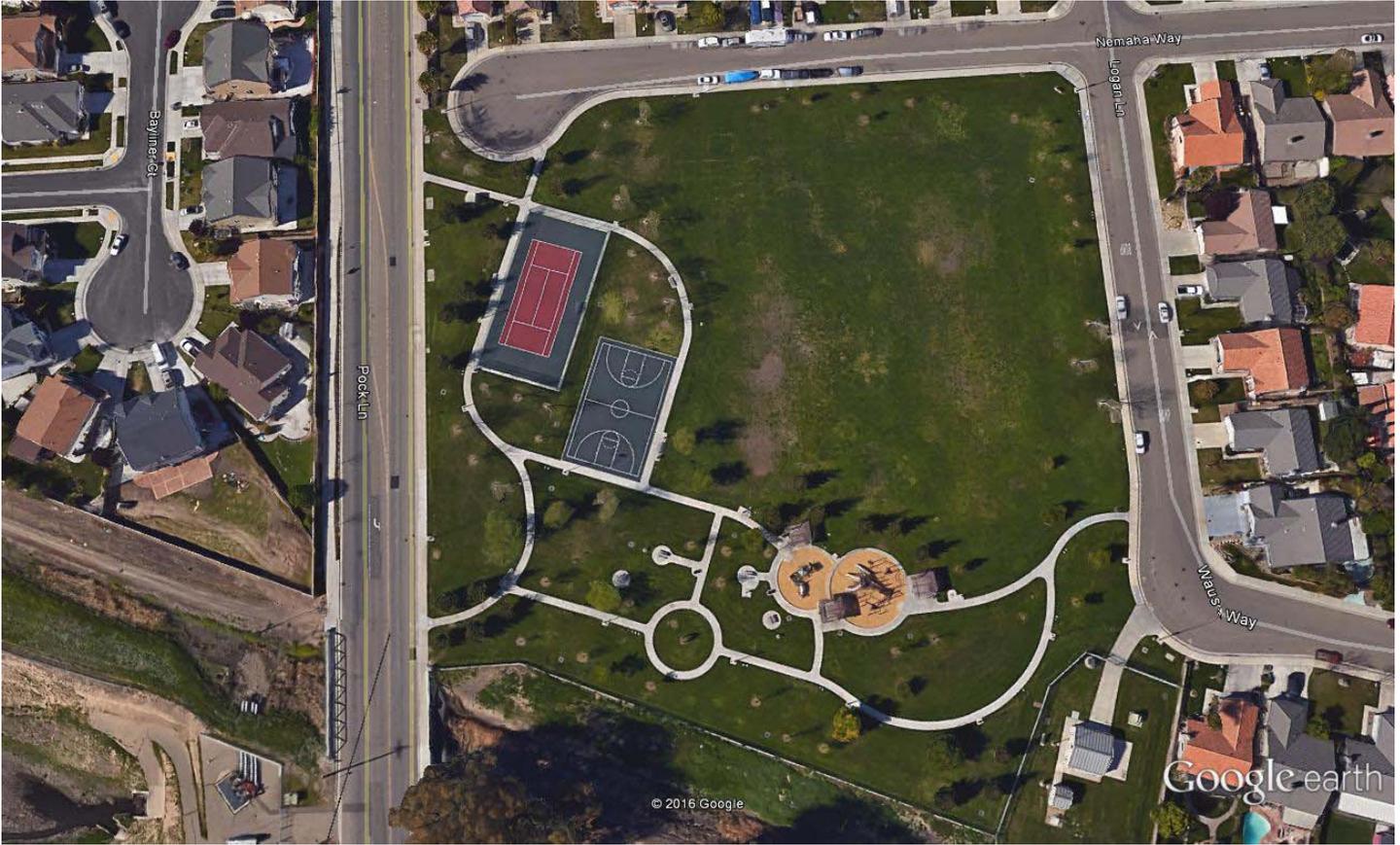
feet  
meters



SHROPSHIRE PARK  
4120 POCK LANE

ONE TENNIS COURT 6,750 SF  
ONE BASKETBALL COURT 5,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth



SMITH PARK  
2606 WILLIAM MOSS

TWO HALF BASKETBALL COURTS 4,600 SF

ATTACHMENT B  
EXHIBIT A



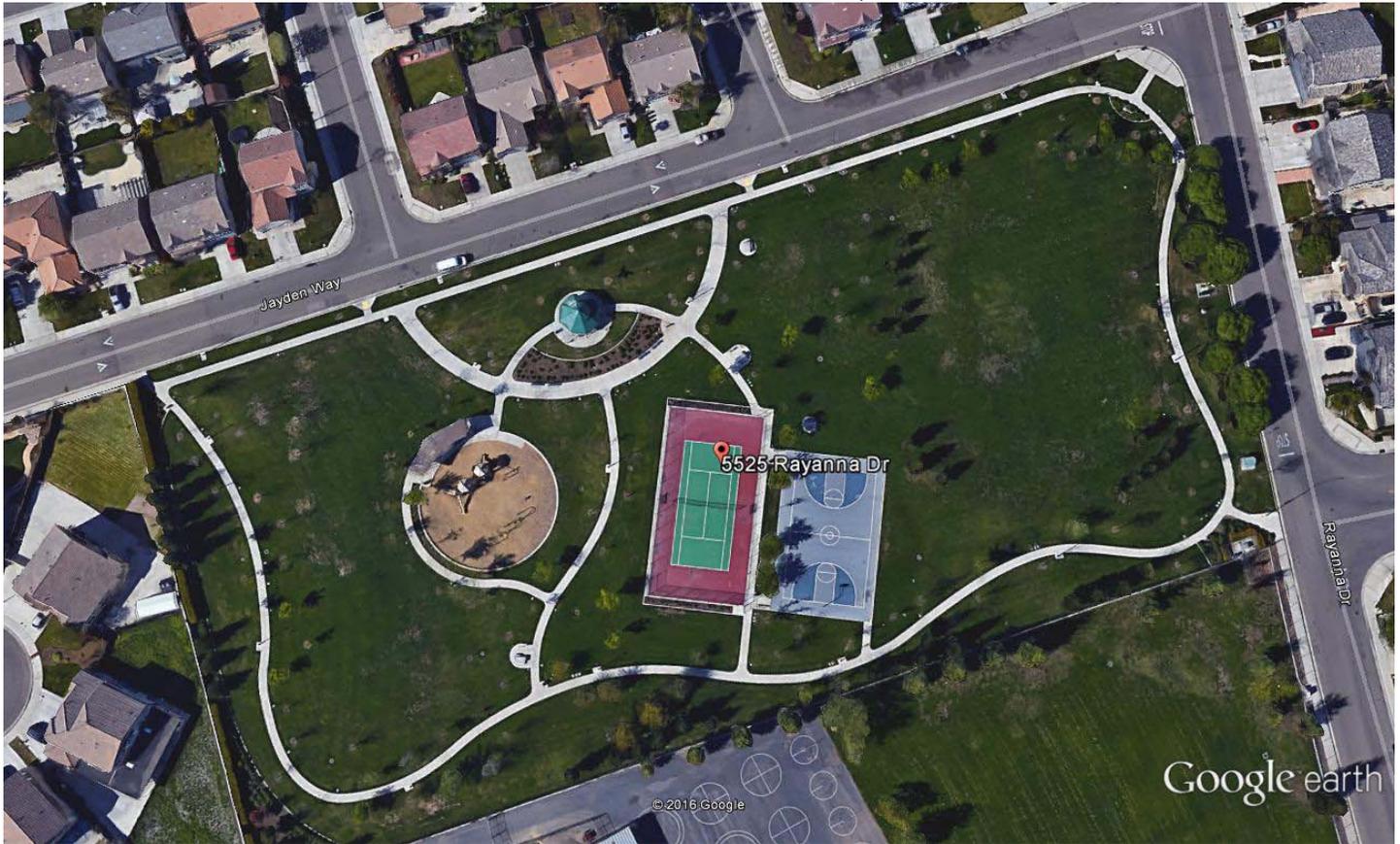
Google earth



UNITY PARK  
5525 RAYANNA DRIVE

ONE TENNIS COURT 6,000 SF  
ONE BASKETBALL COURT 7,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth



WESTON PARK  
3603 EWS WOODS

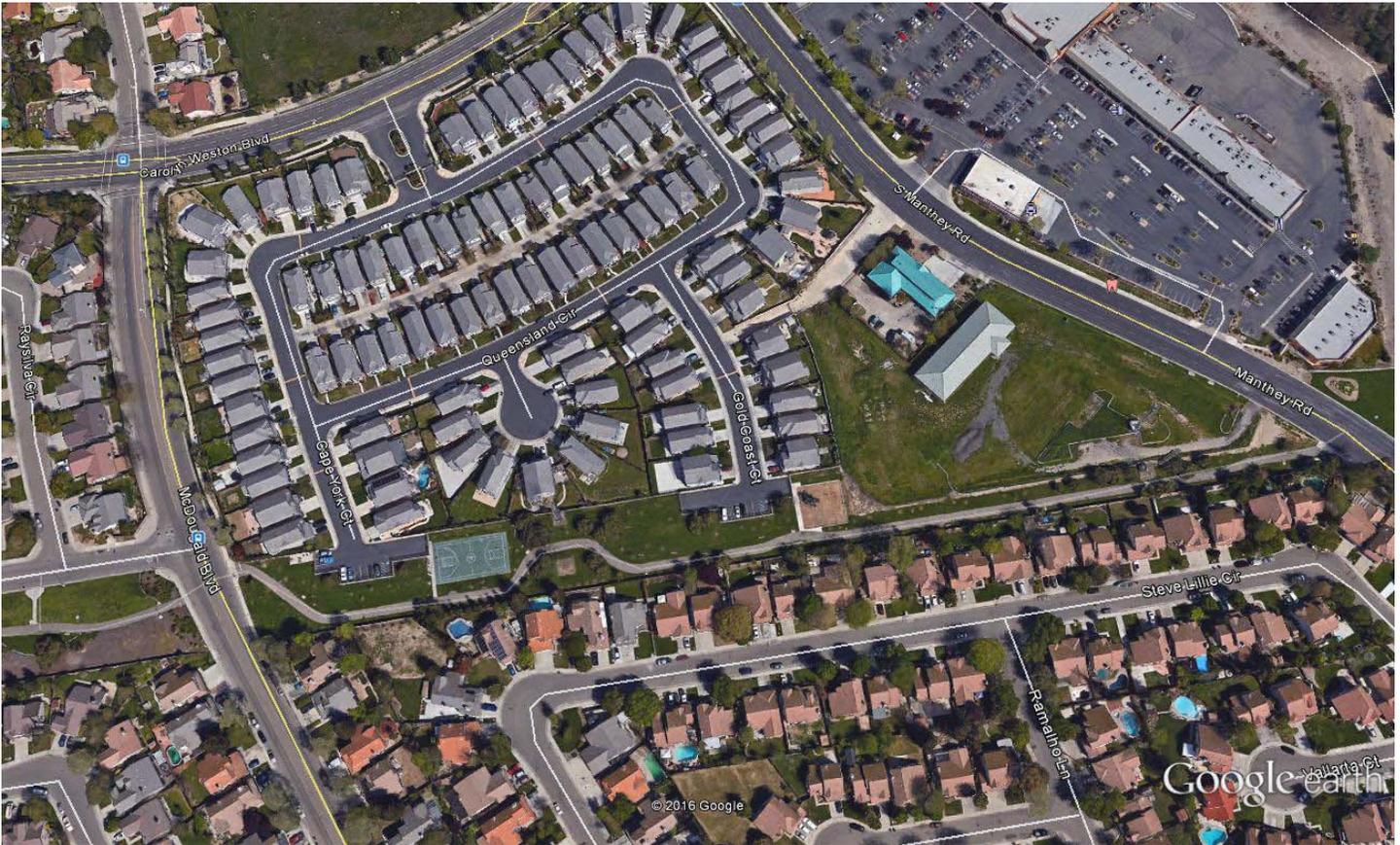
TWO TENNIS COURTS 14,000 SF  
ONE BASKETBALL COURT 6,000 SF

ATTACHMENT B  
EXHIBIT A



Google earth





Google earth



COURT RE-SURFACING  
PROJECT NO. OM-16-039BIDDING SCHEDULE

Each bidder shall bid each item, including all alternate bid(s). Failure to bid an item shall be just cause for considering the bid as non-responsive. Line item costs should include all Contractor's overhead and profit and indirect costs. Bids not presented on City forms shall be cause for considering the bid as non-responsive.

Item	Description	Unit	Quantity	Unit price	Total Price
1	All labor and materials necessary to complete work at BAXTER PARK as described in Special Provisions for Project OM-16-039 (one tennis; one basketball court)	LS	1	\$10,503.75	\$10,503.75
2	All labor and materials necessary to complete work at EQUINOA PARK as described in Special Provisions for Project OM-16-039 (two tennis courts; one basketball court)	LS	1	\$13,568.75	\$13,568.75
3	All labor and materials necessary to complete work at FAKLIS PARK as described in Special Provisions for Project OM-16-039 (two tennis; two basketball courts)	LS	1	\$19,572.75	\$19,572.75
4	All labor and materials necessary to complete work at FONG PARK as described in Special Provisions for Project OM-16-039 (two half basketball courts)	LS	1	\$7,568.75	\$7,568.75
5	All labor and materials necessary to complete work at ILOILO PARK as described in Special Provisions for Project OM-16-039 (one tennis; one basketball court)	LS	1	\$10,473.75	\$10,473.75
6	All labor and materials necessary to complete work at LONG PARK as described in Special Provisions for Project OM-16-039 (one basketball court)	LS	1	\$6,073.75	\$6,073.75
7	All labor and materials necessary to complete work at PARMA PARK as described in Special Provisions for Project OM-16-039 (one tennis; one basketball court)	LS	1	\$10,568.75	\$10,568.75
8	All labor and materials necessary to complete work at PITTS PARK as described in Special Provisions for Project OM-16-039 (one half basketball court)	LS	1	\$3,773.75	\$3,773.75
9	All labor and materials necessary to complete work at SMITH PARK as described in Special Provisions for Project OM-16-039 (two half basketball courts)	LS	1	\$7,568.75	\$7,568.75
10	All labor and materials necessary to complete work at UNITY PARK as described in Special Provisions for Project OM-16-039 (one tennis; one basketball court)	LS	1	\$11,072.75	\$11,072.75

Item	Description	Unit	Quantity	Unit price	Total Price
11	All labor and materials necessary to complete work at WESTON PARK as described in Special Provisions for Project OM-16-039 (two tennis; two basketball courts)	LS	1	\$17,568.75	\$17,568.75
12	All labor and materials necessary to complete work at WESTON RANCH UNIT 77 (Greenbelt) PARK as described in Special Provisions for Project OM-16-039 (one basketball court)	LS	1	\$6,068.75	\$6,068.75

TOTAL BID \$124,383.00

BIDDER'S NAME First Serve Productions Inc.

**Exhibit C:**  
**Insurance Requirements**  
**(Services & Products)**

Contractor 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 and the results of that work by the Contractor, their 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 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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.

If the contractor maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for 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 Mayor, Council, officers, representatives, agents, employees and volunteers* are to be covered as additional insureds on the CGL and AL 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 and CG 20 37 if a later edition is used).

- **Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be endorsed as **primary** insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers*. Any insurance or self-insurance maintained by the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* shall be excess of the Contractor's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

- **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 the 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.

- **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

- **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

- **Claims Made Policies**

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

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

- If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

- **Verification of Coverage**

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. 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, for any reason or no reason.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

- **Special Risks or Circumstances**

The 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**

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

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

- **Maintenance of Insurance**

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

- **Subcontractors**

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.

**Stockton Municipal Code, Charter, and Civil Service Rules**[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[Municipal Code Title 3 REVENUE AND FINANCE](#)[Chapter 3.68 BIDDING, CONTRACTING AND PURCHASING PROCEDURES](#)[Article I. General Provisions](#)**3.68.095 Local employment—Public works contractors.**

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A. Findings. The City Council of the City of Stockton hereby finds that:

1. Unemployment rates in Stockton have been consistently higher than in California as a whole. Statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate.

2. Due to the lack of local jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.

3. Because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parents return from work outside the area.

4. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and more serious injuries, poor homework accomplishments, failing grades and increased high school drop out rates.

5. The City Council of the City of Stockton has concluded that the City needs an expanding employment base and that a policy that encourages contractors who receive City contracts or subsidies to hire residents of Stockton will benefit the City as a whole.

6. Such policy will provide job opportunities to Stockton residents, expand the City's employment base, lessen the drain on public assistance resources and reduce the impacts on the environment caused by high unemployment and long commuting times to jobs outside the area.

B. Declaration of Policy and Purpose.

1. It is the policy of the City of Stockton to ensure full and equitable opportunities for Stockton residents to participate in the employment opportunities that arise from public works contracts.

2. It is also the policy of the City of Stockton to increase the number of employed persons living in the City of Stockton in an attempt to counteract the grave economic and social ills associated with the higher unemployment levels that exist within the City.

3. In furtherance of this policy the City of Stockton has established a local hiring program to encourage the hiring and retention of Stockton residents for the work to be performed under public works contracts.

C. Scope and Goals.

1. Unless such a provision would conflict with a State or Federal law or regulation applicable to a particular contract for public works or improvements, all City contracts for public works or improvements of estimated value or City subsidy of \$100,000.00 or more shall contain provisions pursuant to which the contractor promises to make a good faith effort, with the assistance of local labor union hiring halls or community organizations designated by the City to employ qualified individuals who are, and have been for one year prior to the effective date of the contract, residents of Stockton in sufficient numbers so that no less than 50 percent of the contractor's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Stockton residents.

2. Unless such provision would conflict with a State or Federal law or regulation applicable to a particular contract for a public works project, all City contracts for a public works project referenced in subsection (1) shall contain provisions pursuant to which each contractor or subcontractor shall make a good faith effort to employ apprentices who are enrolled in and participating in a viable apprenticeship program serving the San Joaquin Valley and approved by the State Department of Apprenticeship Standards. This apprenticeship requirement shall apply for each apprenticable craft or trade in which the contractor employs workers in performing any of the work under the contract.

3. If, in response to a written request made at least 48 hours (excluding Saturday, Sunday and holidays) before the date on which one (1) or more apprentices are required, an apprenticeship program(s) does not dispatch any apprentice or dispatches fewer apprentices than requested to a contractor (that has agreed to employ and train apprentices in accordance with California [Labor Code](#) Section 1777.5) within 72 hours of such request (excluding Saturday, Sunday and holidays), that contractor shall be considered in compliance with the apprentice employment requirement for that trade or craft for a 90-day period from the request date, provided the contractor employs those apprentices who are dispatched. Where there is more than one (1) viable apprenticeship program for that trade or craft serving the San Joaquin Valley, a contractor, that is not a participant in or an affiliate of an apprenticeship program and receives fewer apprentices dispatched than requested, shall not be considered in compliance with the apprentice employment requirement unless the contractor has made a written request for the dispatch of apprentices from at least two (2) viable apprenticeship programs. A contractor, that is a participant in or an affiliate of an apprenticeship program, shall make dispatch requests to the program in which it is affiliated or participating.

4. In the event that no viable apprenticeship program exists for a particular craft or trade, the contractor shall be exempt from the requirements of this section with regard to that craft or trade.

5. A contractor employing apprentices pursuant to this section shall employ apprentices in a ratio of not less than one (1) apprentice for each five (5) journeymen in the apprenticeship craft or trade classification that are employed on the public work contract unless to do so would result in apprentice employment in ratios below the minimum ratios prescribed by California [Labor Code](#) Section 1777.5 in which case apprentice employment shall be at least in the ratios prescribed by California [Labor Code](#) Section 1777.5.

6. This section shall not be construed so as to exempt a contractor from any otherwise applicable requirement imposed upon the contractor by the California [Labor Code](#).

D. Good Faith Effort. A bidder or contractor who fails to meet the goal of having 50 percent of its work force be residents of Stockton shall, nevertheless, be deemed to have made a “good faith effort” to hire sufficient numbers of residents of Stockton if, prior to execution of the contract with the City, six (6) or more of the following employee recruitment activities have been undertaken and documented:

1. Placing 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;
2. Placing a valid job order for existing and projected position vacancies with Worknet of San Joaquin County, for no less than 10 consecutive calendar days;
3. Advertising 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;
4. Conducting a job informational meeting to inform the community of employment opportunities of the contractor, to be held at a City or other public facility (may be combined with other contractors);
5. Providing ongoing assistance to Stockton residents in completing job application forms;
6. Conducting a job application workshop to assist the community in applying and interviewing for jobs in the contracting industry, to be held at a City or other public facility (may be combined with other

contractors);

7. Establishing a job application center located in the City of Stockton, where job applications may be obtained, delivered to and collected;
8. Conducting job interviews within 10 miles of the location designated for contract performance;
9. Advertising 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;
10. Telephone solicitation of known potential local subcontractors or employees;
11. Any other means of obtaining employees who are residents of Stockton that are reasonably calculated to comply with the goals of this section.

E. Required Documentation.

1. The contractor shall keep, and provide to the City, on standardized forms acceptable to the City, an accurate record showing the name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor, and the contractor's subcontractors, on the specific public works project, including full-time, part-time, permanent and temporary employees.

2. The contractor shall keep, and provide to the City, on forms acceptable to the City, an accurate record documenting the contractor's good faith efforts to comply with the local resident employment and apprentice employment provisions of this section. Said records shall include: a listing by name and address of all local recruitment sources contacted by the contractor; the date of the local recruitment contact and the identity of the person contacted; the trade and classification and number of employment referrals requested; the number of local residents employed as a result of the contact; and the identity and address of the person(s) employed pursuant to the contact.

F. Forms Submitted Under Penalty of Perjury. All forms required under this section shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury.

G. Irresponsible Bidder Declaration. Should any contractor or subcontractor fail to abide by the good faith local resident employment and apprentice employment provisions of this section, the contractor or subcontractor may be declared by the City to be an irresponsible bidder on future projects pursuant to Section [3.72.010](#) of this code.

H. Binding on Subcontractors. The good faith local resident employment and apprentice employment provisions of this section shall bind the contractor both with respect to persons employed directly by the contractor and to all persons employed by the contractor's subcontractors. The contractor shall be responsible for assuring that all subcontractors document said compliance by submitting, and making available to the City, the forms required by this section.

I. Definitions. As used in this section, the following terms shall have the following definitions:

“Contract for public works or improvement” means any contract with the City for construction, alteration, demolition or repair work.

“Qualified individual” means an individual who is in a certified State or Federally approved apprenticeship program in an applicable trade or has become a journeyman in his or her applicable trade.

“Resident of Stockton” means an individual who has been domiciled, as defined by Section 200(b) of the California [Elections Code](#), within the boundaries of Stockton for at least one (1) year immediately preceding the date of the award of contract by the City and who can verify his or her domicile upon request of the contractor or City by producing documentation such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver's license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within Stockton. For the purposes of this section, the following Zip Code areas are considered to be within Stockton: 95202, 95203, 95204, 95205, 95206, 95207, 95209, 95210, 95212, 95215 and 95219.

“Viable apprenticeship program” means an apprenticeship program approved by the California Department of Apprenticeship Standards that has graduated apprentices annually for at least the past five (5) years. Any apprenticeship program that has been approved for less than 10 years shall be deemed a viable apprenticeship program provided that, following the fifth anniversary of its approval by the California Department of Apprenticeship Standards, it graduates apprentices each subsequent year.

J. Contracts – Bid Documents – Subcontracts.

1. Contracts and bid documents shall incorporate this section by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract.

2. All subcontracts shall expressly acknowledge the City’s status as a third party beneficiary to that subcontract and further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of this section with regard to that subcontract or seek remedies available under this section should a party to the subcontract fail to comply with any of the provisions of this section that apply to the subcontract.

3. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with this section.

K. Exceptions. The provisions of this section shall not apply:

1. Where the City determines that the contract is necessary to respond to a declared emergency which endangers the public health, welfare or safety and there is no time to apply the provisions of this section.

2. To City construction contracts or portions thereof, wherein the work is of a highly specialized nature as determined by the City Council when the contract specifications are approved. (Ord. 011-09 § 1, eff. 10-01-09)

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View the [mobile version](#).

**LOCAL EMPLOYMENT ORDINANCE**

This contract is subject to the requirements of the City of Stockton's Local Employment Ordinance. By my signature below, I certify that I have read and understood the Local Employment Ordinance of the City of Stockton, and agree to abide by its provisions. If selected to perform this contract, I specifically agree to report data on the actual number of Stockton residents employed, and understand that data will be subject to verification by an independent auditor.

Signature of Bidder \_\_\_\_\_



Date Signed \_\_\_\_\_

4/28/16



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.

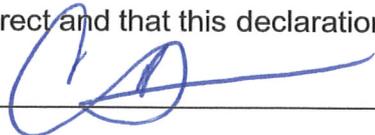
The undersigned declares:

I am the MANAGER, of Frist+Serre Productions, 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.

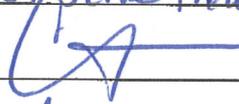
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 4/28/16 at Danville (city), CA (state).

  
\_\_\_\_\_  
(Signature)

**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: FirstSense Productions, Inc.  
BY:   
TITLE: Manager  
DATE: 4/28/14

### 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: First Serve Productions, Inc.

BY: 

MANAGE  
TITLE

DATE: 4/28/14

CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject:	Directive No. <b>HR-15</b>	Page No. <b>1 of 14</b>
DISCRIMINATION AND HARASSMENT POLICY	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

**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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<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 2 of 14</b>
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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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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)

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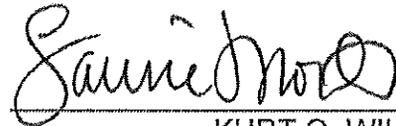
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**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