

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2024, between the CITY OF STOCKTON, a municipal corporation ("City"), and **ROEBBELEN CONSTRUCTION MANAGEMENT SERVICES, INC.** whose address is **1241 HAWKS FLIGHT COURT, EL DORADO HILLS, CA 95762** ("Consultant") for the **AQUATIC FACILITIES RENOVATIONS – VICTORY PARK POOL (PROJECT NO. CR18020)**, hereinafter referred to as "Project".

RECITALS

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

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

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

2. COMPENSATION. City shall pay Consultant for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$607,706.00** or as otherwise mutually agreed to in a Contract Amendment.

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

4. INDEMNITY AND HOLD HARMLESS. Pursuant to the full language of California Civil Code §2782, design Professional agrees to indemnify, including the cost

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(Updated 10/18/23)

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

5. SCHEDULE AND TERM. Consultant shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit A**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **September 30, 2028**, unless extended by mutual agreement through the issuance of a Contract Amendment.

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

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

a. TITLE VI

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

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

b. DISCRIMINATION AND HARASSMENT POLICY

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

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement. https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE RATES

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

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

a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

- ii. Should the Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant shall reimburse the City the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to City the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under Consultant, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- iii. PAYROLL RECORDS - The Consultant to whom the contract is awarded shall ensure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the Consultant's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. APPRENTICESHIP STANDARDS - The Consultant shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor

certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

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

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

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

10. CONTRACT AMENDMENTS. City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work contemplated by Consultant. Any such changes will be set forth in a Contract Amendment which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A Contract Amendment will not become effective until approved by the authorized City official.

11. TERMINATION. The City may terminate this Contract at any time by mailing a notice in writing to Consultant. The Contract shall then be deemed terminated and no Professional Services Contract - ROEBBELEN CONSTRUCTION MANAGEMENT SERVICES, INC. – PROJECT NO. CR18020

(Updated 10/18/23)

further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

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

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

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

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

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

To Consultant: Roebbelen Construction
Management Services, Inc.
1241 Hawks Flight Court
El Dorado Hills, CA 95762

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

16. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or activity set forth in this Contract, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF STOCKTON

**ROEBBELEN CONSTRUCTION
MANAGEMENT SERVICES, INC.**

By: _____
HARRY BLACK
CITY MANAGER

By: _____
Signature

ATTEST:

Print Name

BY: _____
KATHERINE ROLAND, CMC, CPMC
INTERIM CITY CLERK

Title: _____

APPROVED AS TO FORM:

BY: _____
DEPUTY CITY ATTORNEY

DETAILED WORK PLAN

Service Plan

The Victory Park Pool Project will certainly provide a positive impact on the community. No doubt this project will provide a much needed safe recreational facility to serve the community of Stockton for years to come.

Roebbelen has reviewed the efforts taken by the City of Stockton and understands that this is a highly anticipated project with high priority for the City Council.

Our team is ready to help the city deliver this project successfully, as intended to serve your community, while keeping quality, budget and schedule in mind through our management approach.

Approach

Roebbelen understands that to accomplish providing the services necessary to deliver your project, it will be critical for our team to integrate with you and the team associated with helping deliver the project. Our collaborative mindset will help minimize disruption while we insert ourselves into the current efforts, seamlessly, adapting to assist now that your project is ready for construction.

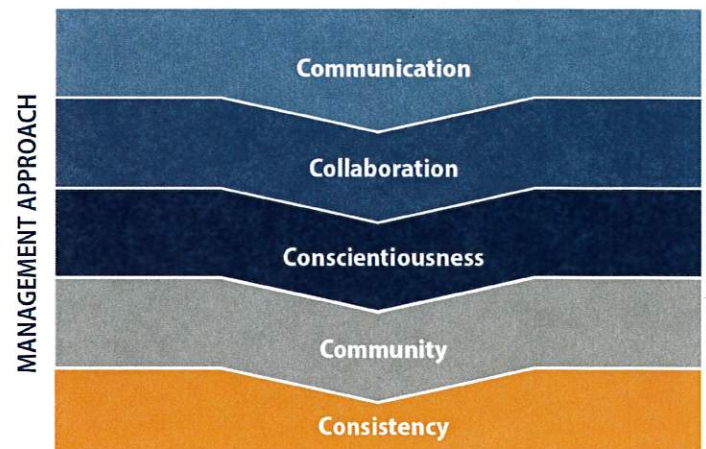
Our services will encompass comprehensive construction support to aid the city staff in overseeing the project throughout the upcoming phases. This includes collaboration with City of Stockton Public Works, Studio W Architects, Aquatic Design Group, and all agencies having jurisdiction over the project.

Roebbelen will work to make each team member successful in their role, to help the Project be a success. All while working to adhere to the prevailing professional standards, quality, and best practices commonly observed among construction managers in the region.

We will approach our part with strong emphasis in adding

value to the City and the project team. To help achieve our goal, we will implement each of the 'Five "C" Pillars':

Only then, can we accomplish for the City, delivering your project successfully.



FIVE "C" PILLARS

Methodology

Roebbelen will lead the way through your construction manager, Inez Ayerra. She will work with the project team to become fully integrated and conduct a thorough review of the project documents, the schedule, known milestones and any other items of interest that may need to be tracked and monitored through construction. With the design team, he will promptly work to get up to speed and fully understand intent to meet the project needs.

Inez has already visited the site in an effort to gain visual knowledge of the site and the project area surrounds. Seeking to identify opportunities that may benefit the project and potential challenges that should be addressed to prevent delay or cost overruns. Additionally, we will

spend time meeting with City staff to familiarize ourselves with specific requirements from the City's perspective.

Relevant Project Issues

Our team understands challenges may come up. We strive to be proactive and if concerns are encountered, Roebbelen will seek to collaborate with the project team to minimize such potential negative impacts to the project. This includes completing an analysis to ensure we can provide the necessary support and recommendations. Inez will coordinate with our in-house preconstruction, estimating and scheduling experts to ensure projects meet the intent of the design, budget and schedule. We will work with the City and the design team to ensure adequate preparation for the start of construction activity, which includes design approvals, identifying permit requirements, coordination with local agencies having jurisdiction over the project and working with the contractor to ensure they meet permitting requirements, including the City of Stockton Building Division.



Current Site

Our Services

In situations that may require work performed during nighttime, Sunday or holidays, Roebbelen will work closely with the City and the Project team to reduce disruptions. We will work with the contractor and provide, in advance, notice to the City. We will prepare community "news letters" if necessary, to help the City provide notice to the surrounding community of such activity occurring during off hours. Additional fees will not be issued to the City when these occurrences fall between the regular contract schedule.

Coordination

The start of any successful construction project begins with an alignment of expectations. The required construction management services and responsibilities for this project, although similar in practice to other construction projects, will have unique elements due to the type of scope, the location and current site conditions. We are prepared to hold regular meetings to ensure collaboration occurs and information is shared. Inez will lead the team, review and investigate project information, to better understand and prepare for what lies ahead. He will work with the City, the design team and the contractor to coordinate activity, ensuring transparency for necessary action items. All with the goal of maintaining positive progress with the project schedule. Additionally, meetings will be scheduled to established a venue for regular status check-in with the project team and other City stakeholders, as deemed necessary by the City.

Budgeting and Invoices

From a general perspective and to confirm a holistic approach is taken for an appropriate and realistic budget validation process, Roebbelen, as an extension of City Staff, will confirm with the City which key members of the team will need to be involved for budget related discussions and recommendations.

Inez will establish and facilitate a collaborative venue to review, discuss, validate and finalize any items that seek to compromise this established budget for the construction of the pool and splash pad. She will review payment applications and invoices for accuracy and completeness. All contracts will be tracked and reported within a regular budget report. Cost changes will be tracked and will follow the City's process for approval. This will help provide a complete financial risk assessment on the project at any given moment.

Roebbelen has in-house estimators that are, on a weekly basis, bidding work for our general contracting division. Inez and Kirk, when necessary and after discussing with City staff, will work with our estimators when the need arises to validate quantities and unit costs for contractor issued potential cost items. He will discuss with the City and establish a process for decision making, with deadlines, to make certain the team does not impact time. This will help process justified changes and better understand if there's a need to add or remove scope, value engineer scope or simply leave as-is.

Roebbelen will take account of the contractors schedule, as it relates to duration and impacts to milestones that may also impact budget. This includes items such as Community events, inclement weather, long lead items and supply chain issues.

Schedule Management

Roebbelen's in-house scheduling experts have the capability to develop a complete detailed project schedules. Our schedulers are a great resource and provide real time information on sequencing activity and lead-times for various site and building systems. This will help identify a realistic view of the amount of time it will take to complete portions of the project. When necessary, we have the ability to validate your contractors schedules. Working collaboratively with all project team members, we review the logic, taking all activity into account to ensure we identify problematic relationships as a way to minimize future risk that may lead to costly delay challenges. This process helps maintain scheduling objectives.

However, Inez has the experience and expertise to review the baseline schedule, as well as monthly updates, for compliance with contract documents. She will check for discrepancies with logic, sequencing and durations. She will confirm that the baseline schedule shows a clear and detailed critical path, towards completion of the work, per contract terms.

During this process, we will work to align project activity with the City and community functions, specifically important during the construction phase. Construction is disruptive and knowing important City and community dates will help minimize the disruption.

Additionally, when monthly payment requests are made, Inez and Kirk will ensure the updated monthly schedule is provided and confirm milestones remain unchanged. Any deviation to the critical path will be noted and clarification will be requested of the contractor. During the weekly meetings, Roebbelen will request that the contractor provides a short interval schedule (SIS). Typically this schedule is known as a three-week schedule that accounts for the current weeks activity and shows planned activity for the following two weeks. Inez will review these schedules and compare to the current baseline schedule update to ensure progress is being accomplished as intended.

Through the entire process, Inez acts as an extension

of City staff, keeping the City informed and providing necessary recommendation.



Current Site

Preconstruction Meeting

Roebbelen will coordinate and facilitate a pre-construction meeting with the project team. During this meeting, the goal will be to orient the contractor, with expectations related to the contract documents, site rules, safety protocols, reporting procedures, inspection protocol and baseline schedule.

Roebbelen will review and verify project documents, such as bonds and contractor licenses to confirm requirements are met and that they stay current through the life of the construction phase. Additionally, formal introductions will take place, roles and responsibilities will be identified and other topics of discussion, related to contract administration, will include securing permits, mobilization, staging areas, safety, temporary fencing and/or barricades, site security, site protection that includes the storm water pollution prevention plan, construction schedule, construction phasing/sequencing, special inspections, submittal schedule and procedures, management of design clarification or revisions (RFIs, ASIs, CCD's), change management, payment applications, weekly meetings, special site or community events, working hours and special coordination protocols.

Document Control

Roebbelen understands that well before construction of your project begins, a file system shall be established. We are prepared to use Procure to facilitate document sharing, review and approvals between the project team members or, if the City prefers a different system, we can certainly discuss that as well.

The project will demand collaboration and through the process we will be communicating by generating, tracking and sharing information with the project team. Inez and Kirk will act as the gate keeper and use the Procure system as our tool to help maintain a record of the project. Through Procure, he will digitally monitor and track various forms of communication like; construction questions, known as RFIs, design modifications, known as ASIs, submittals, daily reports, cost items, payment applications and other items as required by the City.

An important part of maintaining the schedule is to receive, review and return submittals in a timely manner. The submittal procedures, along with other construction related documents such as payment requests, RFIs and change orders will be established, per project contract documents, and we will assist the City in implementing, as such.

The schedule of values is part of the submittal process and Roebbelen will review for accuracy with respect to the requirements of the contract documents. We will work with the design team and the City to verify and validate the payment request applications prior to a recommendation to the City for processing payment.

Roebbelen will coordinate weekly meetings, typically known as the Owner Architect Contractor (OAC) meeting. Inez will generate an agenda, facilitate, record and issue minutes, with an emphasis on action items and steps towards resolution to open items.

RFIs and ASIs

All additional information and clarifications to the contract documents will be reviewed for accuracy and completeness. We take pride in our ability to stop future problems at this stage. By identifying real questions and requiring accurate answers, we will work collaboratively with your design team and the contractor, to allow your project an opportunity to stay on budget and schedule.

All RFIs and ASIs are logged, transmitted and tracked to provide timely and complete responses from the project team. An RFI or ASI might be the first sign of a change to the project, as such, Roebbelen will complete a thorough review, work with the design team to address concerns and notify the City at the earliest point of identifying the potential change.

Submittals / Shop Drawings

The contractor will provide a submittal log following

receipt of the 'Notice to Proceed'. Prioritization of critical submittals with long lead times will be required to meet expected install dates. Roebbelen will require a complete submission of each specification section in one package or as required by the contract documents. We will require the contractor to certify each package for completeness of each submittal and shop drawing. The contractor is responsible for preparing and delivering the submittals and shop drawings for approval by the design team and the City. Inez will receive, review, track, expedite and log all submittals and shop drawings required by the contract documents. He will require the contractor to provide complete and correct submittals and shop drawings prior to routing for final review. Finally, Roebbelen will track, review and coordinate sign-off/approval of all submittals and shop drawings.



Current Site

Permits / Utilities

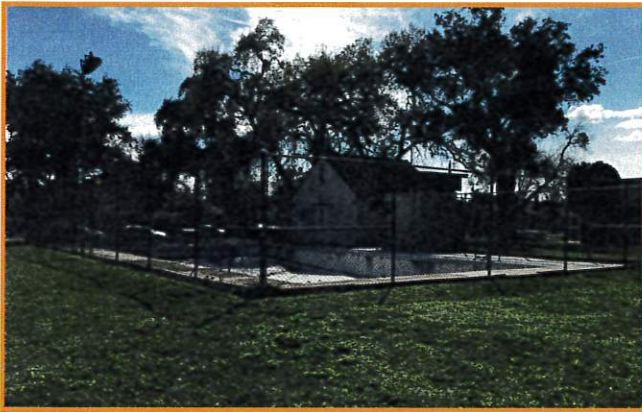
Roebbelen will assist to secure necessary permits, on behalf of the City, if needed. We will complete the coordination necessary to ensure that local utility agencies are notified early and that service will be available on time. In our experience, there is often confusion about the provision for permits and utilities. We will eliminate that confusion through collaboration with the project team and being the party responsible for tracking completion of the necessary permits. We understand, if this task slips, it will put the schedule in jeopardy. We will make this a priority.

Risk Management

Risk management starts with review of the contractor's bonds and insurance to certify compliance with the contract documents. We will transmit the contract, bonds

and insurance to the City for approval. The handling of change orders is discussed in the next section. The remainder of the risk management process will revolve around project controls. Project cost control reports will be maintained on a real-time basis and transmitted to the project team. These reports will cover all project cost exposures tracked against applicable project budget amounts, construction management expenditures, and other contracts for consultants such as testing, etc.

The report tracks cost items, unresolved disputes and contract completion reserves against budgeted construction contingencies, when applicable. Timely notification shall be required by the contractor for cost items to allow proper review and processing. The contractor must include a complete description of the change and cost estimate including any schedule impacts. Roebbelen performs an independent estimate of questionable cost items and evaluates the schedule change for merit.



Current Site

Contract Changes

Once in construction, any proposed costs or request for additional time will be reviewed and evaluated against the project contract document requirements. The goal is to minimize the impact to the project with each evaluated cost item. Roebbelen will engage our estimating and scheduling team when appropriate and consult with the City and the design team as we review, evaluate and negotiate cost and time impacts. We will use all information available to negotiate fairly, but firmly, while providing transparency to the City during each and every step. No changes to a project contract document are accepted unless the City approves and executes a change order. All change orders will be recorded and a change order report will be generated to track status for each. When we encounter a disagreement and a cost

item is not approved by the City, the contractor's may choose to submit a claim. Roebbelen will review and evaluate each contractor claim and provide the City with a recommendation.

Dispute Resolution

The contractor shall notice the disputed work to Roebbelen within the time specified in the contract documents and keep daily records of all work completed under dispute. Roebbelen, in collaboration with the City, will pursue resolution to all disputes through the use of dispute meetings where the contractor will be allowed to present their position and documentation regarding the dispute. We will then look to find a resolution or discuss settlement options, as prescribed in the contract documents that will be forwarded to the City with a recommendation.

Roebbelen's in-house team of experts, that includes estimators, schedulers and builders, will assist when necessary to validate or otherwise reject claims. This is incredibly helpful when it comes to dispute resolution. Whether we need to perform our own estimate, review delay claims, or simply work toward a reasonable solution, we have the resources for a fair outcome, keeping the City's best interest in mind.

Quality Assurance

It is critical for the work to be performed according to the approved project contract documents. Through daily construction observation and the assistance of both the design team and the City, Roebbelen will ensure quality assurance and quality control.

Inez and Kirk will establish a site walk routine that will be documented with daily reports. During these walks any non-confirming work will be identified and discussed with the contractor and the design team. The idea is to communicate often and ensure clear understanding from every perspective. We will facilitate collaboration to identify best path forward. With the assistance of the design team and the City, Inez and Kirk will compare performance with approved submittals, RFIs and other project documents. Part of this process is to establish inspection protocols for special testing and inspection needs. Roebbelen will work with the contractor to coordinate these necessary inspections, as identified in the project contract documents.

During our routine site observation activity, we will partner with the contractor and check that their site office maintains on-site records of contract documents and other required documents for easy and quick reference. This will include the as-built plan set, submittals and shop drawings, Federal, State and local requirements for labor compliance, building code regulations, safety manuals and other logistical needs.

Monthly Pay Applications

Inez, Kirk, and our IOR Todd Kelley, will review the proposed invoices from the General Contractor on a monthly basis, well ahead of the due date that these need to be submitted to the City for processing. Once all in agreement, we will work with the Roebbelen Labor Compliance Specialist team to administer the City of Stockton's Local Hire Ordinance and the Community Workforce Training Agreement (CWTA), as necessary. We will also collect and review monthly local hire progress reports from the contractor, as required.

Project Close-Out And Post Construction Phase

Inez and our team at Roebbelen will continuously and thoroughly review project activity and will not wait until the punch list phase to raise questions about imperfections and non-conforming work. Items identified will be logged and tracked until satisfactorily complete to meet the project contract documents. When we get to the formal punch walk, outstanding items will be the first to be included and tracked. The punch walk will take place to identify additional imperfections and non-conforming work. The contractor will provide notice that all contractual activity has been completed and we will coordinate the punch walk with the City and the design team. Once the walk takes place, we will gather open items, consolidate and input to a master punch list. This list will be issued to the contractor with a directive to proceed and correct all items within a specific time frame. We will work closely with the contractor until these items are completed satisfactorily and once complete, schedule a back-check with the project team to confirm satisfaction from all parties.

Roebbelen is committed to closing out projects in a timely manner. To facilitate prompt project closeout, we take the approach that this activity begins at the start of construction. From the beginning of the construction

phase and in partnership with the contractor, the City and the design team, we will be tracking progress on things like as-built document updates. When we setup the project within Procure, we will develop a closeout file. All closeout documents will be identified, collected, verified to comply with requirements and filed as progress is made in the field. This includes warranties as scope activity is completed. Additionally, any initial start-up, testing of systems and training sessions will be coordinated, conducted, recorded and filed as the building and site systems are completed and fully ready for operation. The User trainings will provide both the user group and the maintenance and operations group a better understanding of how the systems work. Additionally, soft or hard copies of systems manuals will be made available, per contract requirements.

As we progress into the final stages of the construction phase, Inez will liaise with the City to ensure any "owner provided contractor installed" items are received and handed to the contractor for installation. Additionally, we will be coordinating with the City and the contractor for access to owner installations, such as restroom accessories, furniture and other equipment. Similarly, we are prepared to assist with relocation activity and will work with the City to accomplish a seamless transition.

Warranty

We understand a project is not without an occasional warranty call or user complaint. Roebbelen is committed to serving the City through the warranty period. We will be available to conduct a year-end walk-through with the contractor, the City and the design team at the 11th month and ahead of the end of the warranty period. Our team, in partnership with the project team will be ready to expedite any warranty claims and monitor to completion.

Physical Space

Our fee includes an allowance for an office trailer and two work stations that will help deliver our service to the City. The space includes power and internet access. Roebbelen will assume it is acceptable to use the contractors hand washing and toilet facilities.

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CITY OF STOCKTON Construction Management and Inspection Services Aquatic Facilities Renovations - Victory Park Pool																		
March 13, 2024		Proposed Fee \$607,706 Contract Value: \$607,706 Billed to Date: \$0 Contract Fee Remaining: \$607,706 Cost to Complete (Projected): \$607,706 Variance: \$0																
Position Description	Name	Bill Rate	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Subtotal Hours	Subtotal Fee	GRAND TOTAL Hours	GRAND TOTAL Fee
Director	Victor C. Lopez	\$201	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11	2,209
Project Executive	Shawn Stohman	\$185	12	10	11	11	11	11	11	11	11	11	11	11	65	11,958	131	24,195
Sr. Project Manager	Inez Ayerra	\$175	184	160	168	176	176	84	84	84	84	84	84	84	948	165,995	1,300	227,630
Asst. Construction Manager	Karmjeet "Kirk" Bhachu	\$144	69	60	63	66	66	63	63	69	69	69	69	69	456	65,755	654	94,307
Project Inspector	Todd Kelley	\$94	92	100	84	88	88	84	84	46	46	46	46	46	582	54,417	867	81,065
Special Testing and Inspection	Lab Engineer	\$143	92	80	84	88	88	88	84	84	84	84	84	84	516	73,788	846	120,978
Labor Compliance/Site Interviews	Allison Hall	\$103	18	16	17	18	18	18	17	18	17	17	17	17	138	14,255	177	18,272
In-House Support Services	Name																	
Constructability	Craig Fernandez	\$170													0	0	44	7,478
Estimating	Steve Connor	\$170													0	0	44	7,478
Scheduling	Rich Miller	\$170													0	0	44	7,478
	Labor/Month		467	426	426	426	447	447	342	133	17	0	0	0	2,705	386,169	4,118	591,089
	Labor Cost/Month		\$67,954	\$60,960	\$62,045	\$62,045	\$64,999	\$64,999	\$47,336	\$16,146	\$1,730	\$0	\$0	\$0	\$0	\$86,169	\$591,089	
	Reimbursable Expenses (Site Office)		\$702	\$702	\$702	\$702	\$702	\$702	\$702	\$702	\$1,801	\$0	\$0	\$0	\$0	\$16,617	\$607,706	
	Proposed CM Fee: Cumulative Effect		\$283,478	\$345,140	\$407,886	\$473,587	\$539,288	\$587,327	\$604,175	\$607,706	\$607,706	\$607,706	\$607,706	\$607,706	\$607,706	\$607,706	\$607,706	

Note: Rates are subject to an annual inflation increase of 3%, beginning January 2026

B

Insurance Requirements for Professional Services
Aquatic Facilities Renovations – Victory Park Pool

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability/Errors and Omissions** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

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

Other Insurance Provisions

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

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Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

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

Waiver of Subrogation

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

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

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

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

Claims Made Policies

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

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

Verification of Coverage

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

Subcontractors

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

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work**.

Special Risks or Circumstances

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

Certificate Holder Address

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

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

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

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

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

I. PURPOSE

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

II. POLICY

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

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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 2 of 14
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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

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

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

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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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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

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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

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

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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

**CITY OF STOCKTON, CALIFORNIA
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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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PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

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

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

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

B. Investigative Guidelines

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

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

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supervisors, about the harassment.

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

VI. RESPONDING TO THE COMPLAINT

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

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

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

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

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

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

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

VII. DISCIPLINE

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

VIII. ALTERNATIVE REMEDIES

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

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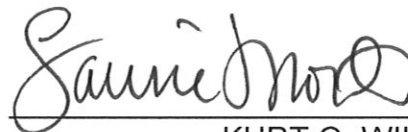
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

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

APPROVED:



KURT O. WILSON
CITY MANAGER

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