

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2016, between the CITY OF STOCKTON, a municipal corporation ("City"), and **KITCHELL** whose address is **2750 GATEWAY OAK DR., SUITE 300, SACRAMENTO, CA 95833** ("Consultant") for the **FACILITIES CONDITION ASSESSMENT (PROJECT NO. O&M-16-018)**, 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 **\$174,198.00** or as otherwise mutually agreed to in a Contract Change Order.

3. **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 **May 11, 2018**, unless extended by mutual agreement through the issuance of a Contract Change Order.

- 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.

4. 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.

5. 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.

6. 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.

Professional Services Contract - KITCHELL – PROJECT NO. O&M-16-018

(Updated 12/17/15)

7. **CHANGE ORDERS.** 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 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 authorized City official.

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

9. **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.

10. **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, Professional Services Contract - KITCHELL – PROJECT NO. O&M-16-018

(Updated 12/17/15)

and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subcontractors. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the 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 Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant 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, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant'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 Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

12. 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.

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

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

To Consultant: Kitchell
2750 Gateway Oaks Dr.
Suite 300
Sacramento, CA 95833

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

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

a. TITLE VI

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

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

b. DISCRIMINATION AND HARASSMENT POLICY

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

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

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

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 insure 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 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 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.

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.

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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

KITCHELL

BY: _____
KURT O. WILSON
CITY MANAGER

By: 
Signature

ATTEST:

DAVID GIANELLI
Print Name

BY: _____
BONNIE PAIGE
CITY CLERK

Title: SR V. CR PRESIDENT

APPROVED AS TO FORM:

BY: _____
DEPUTY CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

The following are excerpts from ASTM E2018 which define portions of the scope of services. The term Property Condition Assessment is used interchangeably with the term Facility Condition Assessment.

Task 1 – Project Start Up

Task 1 includes a “Kick-off meeting prior to our field evaluation to establish study priorities goals and objectives. At this time the City will make available to the assessment team such drawings, studies and documents pertinent to the building assessment as may be available. A preliminary work plan and schedule will be generated. Kitchell will ask for an asset list and template spreadsheet generated by the City’s CMMS system that includes all fields to be completed during the assessment effort.

A deferred items prioritization scheme will be developed that will be used in the final report. Kitchell will discuss and clarify the City’s definition of an asset to be included in their CMMS system.

Kitchell will discuss various ways to express costs for deferred maintenance projects with the City and together, the City and Kitchell will agree on the final method and cost components to include in Kitchell’s cost estimates.

Kitchell will discuss and recommend final deliverables for this effort. Specific deliverables are discussed below.

The facilities to be assessed are specifically identified in Attachment A to the Request for Proposals for Professional Services Facilities Condition Assessment (O&M 16-018).

Task 2 –Inventory

Prior to conducting site visits, Kitchell will notify the City at least two weeks in advance of the facilities to be visited on each work day of the field inventory.

Kitchell will conduct a visual walk-through survey and compile notes and photographs. Up to five core asset groups will be tagged with a number and bar code label. Nameplate information will be captured for every asset tagged.

Kitchell will field verify (rough order of magnitude) the square footages listed in the facility list provided by the City. Should a major disparity (>10%) be noted, the City will be immediately notified.

Architectural Elements

Visually examine the roof material, flashing, penetrations, skylights and other appurtenances on the roof. Exterior walls, windows and doors will be examined for irregularities, structural damage, wear and energy consuming issues. Interior finishes will be observed for deficiencies and wear. The site will be observed for pavement damage, curb damage, and obvious access

barriers. Kitchell will visually observe and assess the park-maintained structures, and amenities for deficiencies and wear.

Mechanical/Electrical/Plumbing/Fire Sprinkler System

Visually examine the mechanical, electrical, plumbing, and fire sprinkler systems to determine capacities, condition, and remaining useful life. Electrical Systems to be reviewed include power distribution, emergency power, lighting systems and fire alarm. Mechanical systems to be reviewed include HVAC, plumbing fixtures, visible waste and vent lines, pumps and motors, and sprinkler system adequacy.

Water Intrusion Observation

Conduct a visual evaluation of the building envelope to include roofing, exterior skin, and windows.

ADA Compliance Observation

Kitchell will note any readily observable ADA deficiencies. The ADA assessment will not include exhaustive testing or measuring, but will focus on visible barriers.

Life Safety Hazards

Kitchell will immediately notify the City should a life safety hazard be observed at any City facility.

Structural Assessment

The scope of Kitchell's structural assessment is limited to the visual observation and notation of apparent structural deficiencies and does not include calculations or analysis.

Vertical Transportation

Kitchell will visually observe elevators and elevator equipment for ADA compliance, expected remaining useful life and operation.

Hazardous Materials

Kitchell will make note of observed conditions that may indicate the presence of hazardous materials (e.g. 9"x9" floor tile that may indicate the presence of asbestos, age of building that may indicate the presence of lead paint, age or type of insulation that might indicate the presence of asbestos, etc.). When such elements are identified, Kitchell will notify the City and determine how to address hazardous elements in the FCA cost estimate. The costing methodology to be employed for the handling of potentially hazardous elements may be determined in the project kick-off meeting.

Task 3 – Evaluation & Findings

During Task 3, the Kitchell team shall perform all tasks necessary to compiling and preparing the draft report. These tasks include preparation of the Property Condition Report, comparing existing conditions to goals established in Task 1 and applying cost references.

Statement of Probable Construction Cost (SPC)

Prepare a Statement of Probable Cost (SPC) for each deficiency identified in the facility. The SPC shall be a budget level conceptual cost estimate expressed in an agreed upon method.

Task 4 –Reporting

The City will review draft report and render comments to Kitchell. Kitchell shall incorporate City comments, prepare and deliver final report to City in printed and digital, editable formats.

Deliverables:

Kitchell will provide the following deliverables:

- 1) Pilot Report: Kitchell will produce two draft copies of a pilot report for one building.
- 2) Preliminary Assessment Report: Kitchell will incorporate City comments on the Pilot report and prepare two draft hard copies and one soft copy in Microsoft Excel for each of two draft review cycles. The final report will consist of one comprehensive document including all buildings and a master spreadsheet containing all assessment data.
- 3) Final submittal shall consist of two hardcopies in 8-1/2 x 11 format and one soft copy in PDF format and Microsoft Excel that include:
 - a. A cost estimate, with brief supporting narrative for each building, on the remaining useful life of each major system within the building.
 - b. Listing of building, system, and component items evaluated with identifying descriptive detail;
 - c. Detailed listing and description of building, system and component condition and deficiencies;
 - d. Prioritized repair/replacement schedules by building, system and component deficiencies, using prioritization system agreed to with the City;
 - e. A facility condition index (FCI) for the building with defined values indicating good, average, and poor indices;
 - f. Budget level cost estimates for asset repair or replacement suitable for major maintenance, capital renewal and capital replacement budgeting over a 20 year period.
 - g. Electronic files in Microsoft Excel format containing the results of the assessments necessary for transferring the information to the City's CMMS. The transfer of data from the Excel files into the City's CMMS will be done by City personnel (or consultant) by addendum to this agreement. City will provide the CMMS template format, data format and header titles (if applicable).

Task 5 – Maintenance Staffing and Costs Report

Provide the preventive maintenance, task hours, and skill level recommended for the list of assessed buildings, systems, components, park structures, and amenities.

The Maintenance Staffing and Costs Report will contain the following elements:

- 1) Benchmark Maintenance Staffing & Repair Costs for the City's Facilities;
- 2) Current Replacement Value;
- 3) Annual Benchmark Facility Maintenance Costs by Building Type;
- 4) Weighted Age Factors by Building Type;
- 5) Annual Benchmark Maintenance Costs by Trade Classification;
- 6) Analysis of Out-source vs In-house Maintenance Services.

Deliverables:

- 1) Preliminary Maintenance Staffing & Costs Report: Kitchell will prepare two draft hard copies for City review. City comments will be incorporated.
- 2) Final submittal shall consist of two hardcopy originals bound in 8-1/2 x 11 format and an electronic copy in PDF format.

Notes:

- 1) Any related meetings other than those itemized above are not included. Any other City requested meetings will be billed as an hourly (T&M) additional service.
- 2) It is assumed any existing reports or studies of the building(s) will be made available for use by the Kitchell.
- 3) Hazmat documentation and abatement recommendations are not included. No destructive testing will be performed.
- 4) The statement of probable cost will relate to current date of construction, with appropriate contingency unless agreed otherwise.
- 5) Boundary and Topographic Survey is not included.
- 6) Soils or Hydrology Investigation is not included.
- 7) Traffic Study is not included.
- 8) Seismic (ASCE 31-03 or ASCE 41-13) study is not included No destructive investigation or engineering analysis is included.
- 9) ADA scope is limited to visually identifying significant barriers and providing recommendations and associated costs as noted.

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

Request for Proposals for Professional Services

Facilities Condition Assessment

(O&M 16 – 018)

Date Issued: January 29, 2016

Date Due: March 3, 2016 at 4:00:00 pm

Contact: Paul Acosta, Program Manager III
paul.acosta@stocktonca.gov

City of Stockton

Public Works Department

22. E Weber Ave., Room 301

Stockton, CA 95202

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

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Attachment C: Instructions to Proposers

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

I. Introduction

The City of Stockton, CA (City) is seeking Requests for Proposals (RFPs) from qualified consultants to provide comprehensive, professional Facilities Condition Assessment (FCA) services for approximately 120 buildings/structures totaling approximately 837,000 sq. ft. (Attachment A). The inventory includes, but is not limited to, municipal government, general office, emergency services, community center, library, park, civic center, industrial, and corporation yard facilities.

The purpose of the FCA is to provide comprehensive documents for prioritizing capital improvements and maintenance as well as appropriately allocating operating budgets.

Prospective firms will be required to provide team qualifications, proposed work plans, proposed schedules, and other related items as part of the proposal submittal (see Section IV). The deadline for submitting proposals is 4:00:00 p.m., Thursday, March 3, 2016.

The estimated cost of this project is approximately \$0.20 per sq. ft. of facility floor space.

II. Scope of Work

The City is requesting proposals from qualified consultants for comprehensive FCA services. Required services shall include, but are not limited to:

1. Identifying and documenting current facility conditions and deficiencies to include Americans with Disabilities Act (ADA) deficiencies
2. Recommending corrections for all deficiencies
3. Providing cost estimates for corrections
4. Forecasting future facility renewal/reconstruction costs
5. Providing assessment of level of perceived maintenance effort versus industry standards. Also, provide preventative maintenance recommendations to include minimum standards of day-to-day upkeep and associated costs based on industry standards (including but not limited to: janitorial staffing, basic cleaning/deep cleaning, paint, flooring replacement)

Consultant will meet with City staff to identify all reliable sources of existing data such as facility inventory lists, plans, maps, studies, etc. Where applicable, existing studies and reports will be incorporated in the FCA and reflected in the final report.

The types of building systems surveyed may vary with each building and shall include, but are not limited to, the following systems:

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

1. Site: topography, drainage, access/egress, paving, curbing, parking, flatwork, utilities
2. Exterior Systems: foundation, roofs, walls, window systems, exterior doors, civil/structural components
3. Interior Systems: walls, doors, flooring, ceiling, hardware, architectural components
4. Fire/Life Safety Issues (including hazards, alarms, and fire escapes)
5. Heating, Ventilation, and Air Conditioning, including controls and terminal units
6. Electrical and Electrical Distribution to include generators
7. Plumbing Systems: fixtures, supply, storm and sanitary sewer drainage, valving, irrigation
8. Fire Protection
9. Specialized Construction and outbuildings
10. Specialized Equipment and Systems
11. Elevator Systems

Consultant is expected to generally address observed seismic deficiencies and general hazardous materials (lead, asbestos, etc) condition based on known/assumed age and type of facility construction for each facility. Specialized destructive seismic testing or hazardous material sampling/testing is not in the scope of proposed FCA.

The consultant shall inspect all identified facilities to produce an accurate analysis that identifies all components and elements requiring maintenance, repair, and/or major capital investment. The consultant team shall include a California licensed Civil/Structural Engineer, Mechanical Engineer, Electrical Engineer, and Architect. The consultant will thoroughly examine building systems using non-destructive on-site observations to compile a complete understanding of current conditions. Consultant will ensure that the inspection staff has the appropriate training and equipment to record consistent and accurate data.

Inspections – The method of the inspection process shall allow for a comprehensive inspection of observable systems, while utilizing input from City staff to complement the assessment of current conditions with details of the facilities' background. At a minimum, inspectors shall gather the following information on each property:

1. Property Characteristics – An inventory of all building systems with each system component quantified as a count, an area, a length, and/or a height; whichever measurement is most appropriate for each system. Confirmation/validation of building area (square footage) shall be obtained during inspection.
2. Age – Identification/approximation of the year each system component was installed.

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

3. Current Condition – An assessment of the current condition of each system component and a determination of the level of repair necessary to restore these components to optimal condition, or year the asset is to be replaced.

For purpose of consistency, system components shall be defined along with a standard list of repairs and action levels for inspectors to choose from in rating each system condition. Action level shall be defined for individual components. Standard definitions and systems of actions are intended to provide a more accurate assessment of facilities.

Format – The consultant shall have a thorough understanding knowledge of ASTM Designation E2018, Standard Guide for Property Condition Assessments: Baseline Property Condition Assessment Process, as each subject FCA, identified in Exhibit A, shall generally follow said format. Format, to include individual and summary reports, shall be confirmed by City and consultant prior to commencing assessments. Once format is confirmed, City will require a pilot FCA be conducted on a facility of its choosing to confirm FCA deliverable format individually and in summary. Once pilot FCA format and accuracy is confirmed, the remainder of the FCA for the project will be given authorization to proceed. Hard copy and digital deliverables will be required.

III. Schedule

Responses to the RFP must be submitted to the City of Stockton as outlined in Section IV **no later than 4:00:00 p.m., on Thursday, March 3, 2016**. Responses received after this date and time will not be considered. A **MANDATORY** pre-proposal meeting is scheduled for **Thursday, February 11, 2016 at 10am**. The pre-proposal meeting will be held at Arnold Rue Community Center, 5758 Lorraine Avenue, Stockton, CA 95210.

The City proposes the below schedule for the review and selection process as well as expected timelines for deliverables:

- | | |
|--|----------------------------------|
| - Release RFP | January 29, 2016 |
| - MANDATORY pre-proposal meeting | February 11, 2016 (10 a.m.) |
| - Question submittal deadline | February 18, 2016 (4:00:00 p.m.) |
| - Answers posted on Bid Flash | February 22, 2016 |
| - Proposal Due Date | March 3, 2016 (4:00:00 p.m.) |
| - Review and scoring of submittals | March 7-11, 2016 |
| - Interviews w/finalists | March 17, 2016 |
| - Award of Contract | May 10, 2016 |
| - Execute Contract and Notice to Proceed | May 11-May 18, 2016 |
| - Kickoff Meeting | May 19, 2016 |
| - Pilot Building FCA due | June 9, 2016 |
| - Draft FCA due for comment | September 15, 2016 |

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

- Final Draft due

October 21, 2016

The schedule may be modified and/or extended if necessary.

IV. Proposal Requirements and Format

All submittals must follow the format described in this section. Respondents are encouraged to submit concise and clear responses to the RFP. The City of Stockton reserves the right to include or exclude any part of the submittals in the final agreement with the selected consultant.

Four (4) bound copies of the submittal, one (1) unbound, reproducible copy, and one CD containing a pdf copy must be submitted. Each submittal shall contain no more than 20 double-sided 8 1/2" x 11" pages (not counting dividers, exhibits, and any relevant appendices). Font shall be no less than 10pt. All pages shall be numbered. Drawings provided with the submittal shall not exceed 11" x 17".

Submittals shall be placed in a clearly marked envelope titled Facilities Condition Assessment (O&M 16-018) and delivered or mailed to:

City of Stockton

Public Works Department

22. E Weber Ave., Room 301

Stockton, CA 95202

Attn: Paul Acosta, Program Manager III

Submittals must include the following components in the order listed below:

- Part 1: Cover Letter/Executive Summary (5 points)
- Part 2: Experience and Qualifications of Consultant/Team Members (30 points)
- Part 3: Understanding of Project Scope (25 points)
- Part 4: Commitment to Project Budget & Detailed Work Plan (20 points)
- Part 5: Delivery Schedule and Timeline (15 points)
- Part 6: Reference Review (5 points)

Total Possible: 100 points

Part 1: Cover Letter/Executive Summary (5 points)

In no more than three (3) pages, the Cover Letter and Executive Summary shall include:

1. The names of the key members of the consultant team;
2. The mailing address, telephone number, and the name of the main point of contact for the consultant team;
3. A summary of the consultant's Facility Condition Assessment experience and qualifications and the significant advantages to selecting the consultant;
4. The name and title of the representative(s) that attended the mandatory pre-proposal meeting;
5. An acknowledgement of receiving any addendum(s) to the RFP document sent out by the City.

Part 2: Experience and Qualifications of Consultant/Team Members (30 points)

Provide detail relating to the experience and qualifications of the members of the team including an organizational chart showing all key personnel who will be assigned to this project. Submit brief resumes demonstrating the training, experience, and other qualifications of the key personnel who will be assigned to this project.

Consultant should further document expertise by including the information regarding the following:

1. Facility and Property Condition Assessments to include applicable facility inventory use, type, and area (sq. ft.).
2. Experience of proposed consultant team working together as a team on similar scope and type of projects.
3. Understanding of operations, activities, and maintenance of public facilities.
4. Experience with the use of life-cycle cost and value engineering.
5. Any other information that would assist the review team in understanding the consultant team's capacity to efficiently and effectively complete the project.

Part 3: Understanding of Project Scope & Detailed Work Plan (25 points)

Each respondent shall demonstrate its capacity to deliver comprehensive, professional FCA services. Proposer should outline methodology and logistics capable of meeting the goals outlined in the FCA scope. Provide a proposed work plan for development and implementation of the FCA as described in the scope of work. Proposer should draw from previous experience and demonstrated competence to articulate their capabilities are distinct, comprehensive, and add value. Examples of report format (formal hard copy and digital deliverables) are recommended.

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

Part 4: Commitment to Project Budget (20 points)

Consultant shall provide a total base fee for the project. Each responding consultant shall include an acknowledgement that it can effectively complete this project within the budget indicated. Each respondent should clearly explain in this section the methods and process it will use to insure the project is within budget and that the City will be getting the best value within the budgeted amount. Information in this section shall include cost per sq. ft. for additional facilities during the course of the project and an hourly fee schedule shall be submitted for each proposer and any sub-consultants.

Part 5: Delivery Schedule and Timeline (15 points)

Discuss in this section the steps the consultant team proposes to use. Clearly outline the delivery schedule and timeline of each component of the project. Specific dates should be used assuming an award to this RFP in April 2016 and an executed agreement by May 2016. Consultant shall be prepared to begin work within two (2) weeks of the Notice to Proceed. Completion of this assessment in a timely fashion will be a factor in scoring this section. Indicate in the proposed scheduling the various involvement and decision points required of the City. A gantt chart or schematic representation of the delivery timeline with pertinent milestones and events is required in this section.

Part 6: Reference Review (5 points)

The review team will conduct a background reference review of each respondent. Please include the following information for three (3) projects that the proposed consultant team worked on together:

1. Name of the Project/Study
2. Location of the Project
3. Name, title, and contact information for the client.
4. Project Budget
5. Date of Completion of the Project

V. Proposal Terms and Conditions

1. Examination of Proposal Materials

The submission of a proposal shall be deemed a representation and warranty by the proponent that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. No request for modification of the provisions of the proposal shall be considered after its submission on the grounds the proponent was not fully informed as to any fact or condition.

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

2. Addenda Interpretations

If it becomes necessary to revise any part of this RFP, a written addendum will be provided to each firm that requested and/or received a copy of this RFP. The City of Stockton is not bound by any oral representations, clarifications, or changes made in the RFP by the City or its agents, unless such clarifications or change is provided in written addendum from the City of Stockton.

3. Designated Contact

For the purposes of this RFP, the designated contact is Paul Acosta, Program Manager III. Any questions concerning the scope of work and the selection process shall be directed to Paul Acosta, who may be reached at paul.acosta@stocktonca.gov. Any and all questions and responses concerning this RFP will only be accepted in writing, via email. **All questions must be received by Thursday, February 18, 2016 by 4:00:00 p.m.** Responses to questions will be posted by Monday, February 22, 2016 on the City's Bid Flash website and will become part of the RFP. It is the consultant's responsibility to check the website for updates.

4. Public Records

This RFP document and all submittals in response thereto are public records. Prospective consultants are cautioned to include any material into the proposal that is strictly proprietary in nature.

5. Proposal Costs

All costs associated with the preparation of RFP submittals shall be borne by the respondent. This RFP does not constitute any form of offer to contract.

6. Reservation of Rights

The City reserves the right, for any reason, to accept or reject any one or more proposals; to negotiate the terms and specifications of the proposal; to modify any part of the RFP; or issue a new RFP.

7. Product Ownership

Any documents resulting from the contract will be the property of the City.

8. Term of Project

The term of the contract will be two (2) years. The schedule of the project deliverables is independent of the term of the contract and is listed above.

9. Causes for Disqualification

City of Stockton
Public Works Department

Request for Proposals for Professional Services
Facilities Condition Assessment (O&M 16-018)

Any of the following may be considered cause to disqualify a proponent without further consideration:

- A. Evidence of collusion among proponents;
- B. Any attempt to improperly influence any member of the evaluation panel;
- C. A proponent's default in any operation of a professional services agreement which resulted in termination of that agreement; and/or
- D. Existence of any lawsuit, unresolved contractual claim, or dispute between proponent and the City.

EXHIBIT B
FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY CITY

- 1) City to provide access to all areas within the facilities identified in Exhibit “A” and provide escorts by technicians familiar with the specific facilities.
- 2) City will provide Information Technology staff (or consultant) familiar with the City’s CMMS system and configuration that will facilitate the Facility Condition Assessment data integration process.
- 3) City will provide any software modules or licenses required for data integration with the City’s CMMS system.
- 4) City will provide remote access to the City’s CMMS software system (if requested).
- 5) City will provide no other equipment or materials as part of this agreement.

City of Stockton Facilities Assessment ~120 City Buildings ~837,000 SF		EAS Dept Executive	Project Manager	Project Architect	MEP Engineer	Civil Engineer	Estimator	Project Engineer	CMMS Specialist	Administrative Assistant	Total Hrs	Total Fee
Task #	Description	\$ 182	\$ 157	\$ 147	\$ 147	\$ 147	\$ 131	\$ 110	\$ 150	\$ 80		
1	Task 1 - Project Start-up											
1.1	gather plans and maintenance data on existing facilities										0	\$ -
1.2	review gathered data; develop project schedule & report format			20	40	20					80	\$ 11,760
1.3	kick-off meeting		8								8	\$ 1,256
1.4	project management		4								4	\$ 628
	Subtotal Task 1	0	12	20	40	20	0	0	0	0	92	\$ 13,644
2	Task 2 - Inventory											
2.1	pre-assessment mtg			8	8	8					24	\$ 3,528
2.2	field assessment			80	160	80				4	324	\$ 47,360
2.3	debrief/trip report			8	16	8					32	\$ 4,704
2.4	asset tagging										0	\$ -
2.5	project management		8								8	\$ 1,256
	Subtotal Task 2	0	8	96	184	96	0	0	0	4	388	\$ 56,848
3	Task 3 - Evaluation and Findings											
3.1	analyze and enter data from the field assessment			80	160	80					320	\$ 47,040
3.2	review cost library						24				24	\$ 3,144
3.3	prepare/deliver (draft) pilot report			4	8	4				8	24	\$ 2,992
3.4	project management	4	8								12	\$ 1,984
	Subtotal Task 3	4	8	84	168	84	24	0	0	8	380	\$ 55,160
4	Task 4 - Reporting											
4.1	prepare/deliver draft complete assessment report			12	24	12				16	64	\$ 8,336
4.2	finalize cost library						16				16	\$ 2,096
4.3	prepare and submit final report			8	16	8				8	40	\$ 5,344
4.4	quality control	8	16	8	16	8					56	\$ 8,672
4.5	project management		24								24	\$ 3,768
	Subtotal Task 4	8	40	28	56	28	16	0	0	24	200	\$ 28,216
5	Data Integration											
5.1	Coordinate with City to define integration process								8		8	\$ 1,200
5.2	Map assessment data to CMMS template									40	40	\$ 3,200
5.3	Coordinate integration errors and data conflicts								8	8	16	\$ 1,840
	Subtotal Task 5	0	0	0	0	0	0	0	16	48	64	\$ 6,240
6	Maintenance Cost Study											
6.1	Gather information for study		4		8						12	\$ 1,804
6.2	Develop report				40				8		48	\$ 7,080
6.3	Submit draft report to City for review		4								4	\$ 628
6.4	Make corrections requested by the City				8						8	\$ 1,176
6.5	Generate final report		2		4						6	\$ 902
	Subtotal Task 6	0	10	0	60	0	0	0	8	0	78	\$ 11,590
		12	78	228	508	228	40	0	24	84	1202	
		\$ 2,184	\$10,676	\$33,516	\$65,856	\$33,516	\$ 5,240	\$ -	\$ 2,400	\$6,720	1202	\$171,698
Estimated Expenses												\$ 2,500
												LUMP SUM NOT TO EXCEED \$ 174,198

Facilities Condition Assessment fee per SF	Report Type
Square Footage	Basic (per sf)
up to 30,000	\$ 0.23
30,000 to 49,999	\$ 0.18
50,000 to 99,999	\$ 0.13
100,000 to 199,999	\$ 0.11
200,000 to 299,999	\$ 0.09
300,000 to 399,999	\$ 0.06
400,000 to 499,999	\$ 0.05
500,000 and above	\$ 0.04

Notes:

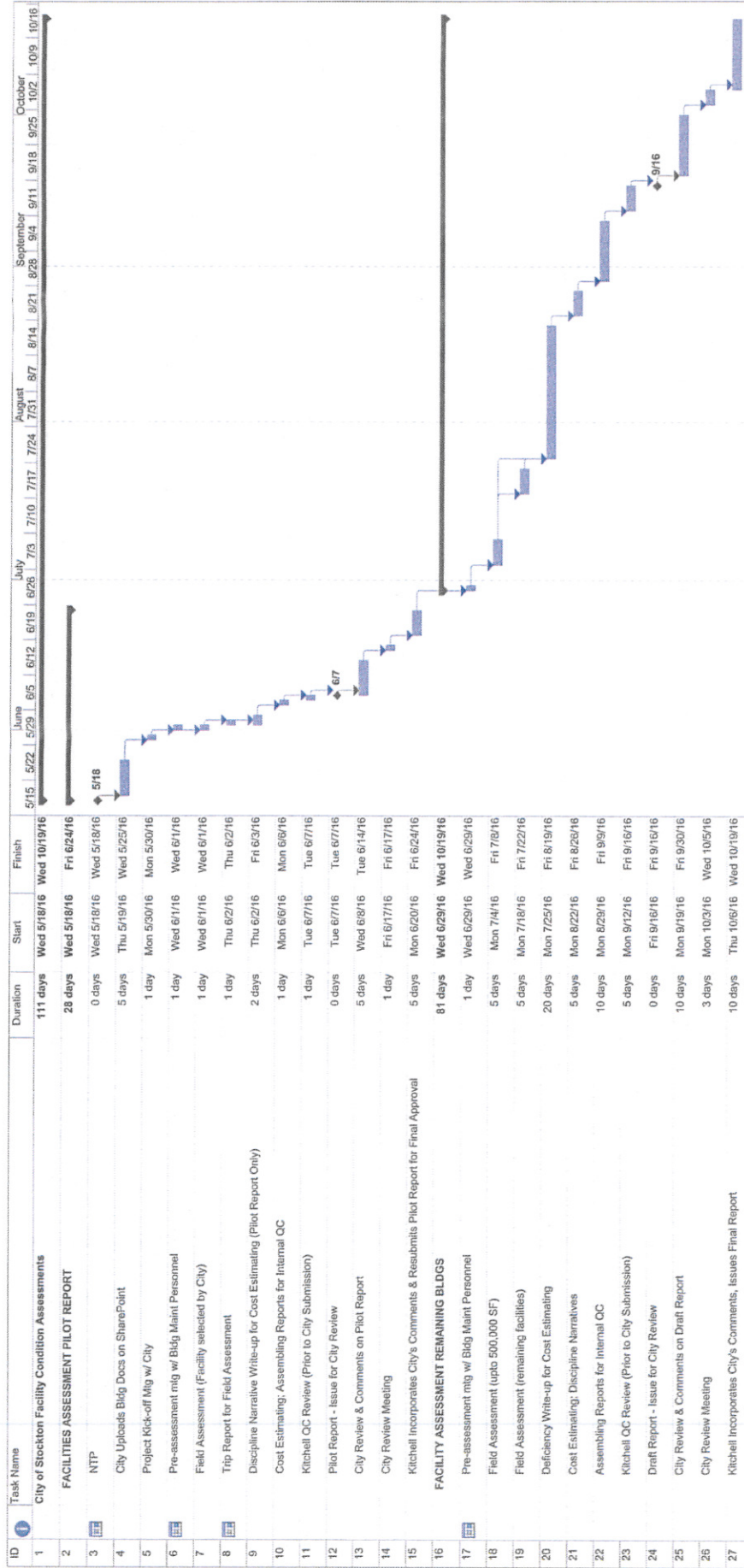
Minimum fee per structure: \$1,500

Assumes a minimum of 50,000sf of facilities are being assessed on the same day.

Role	Hourly Rates
Principal-in-Charge	\$182
Project Director	\$173
Engineering Department Manager	\$182
Senior Project Manager	\$157
Project Manager	\$157
Project Engineer	\$110
Architect	\$147
Structural Engineer	\$147
Civil Engineer	\$147
Mechanical Engineer	\$147
Electrical Engineer	\$147
Commissioning	\$110
BIM Manager/Specialist	\$118
Estimating Manager	\$147
Estimator	\$131
Scheduling Manager	\$147
Administrative Support/Clerical	\$80
CMMS Specialist	\$150

PROPOSED PROJECT TIMELINE

EXHIBIT B



Task

Project Summary

External Task

External Milestone

Inactive Summary

Manual Task

Manual Summary Rollup

Split

External Milestone

Inactive Milestone

Manual Summary

Manual Summary

Manual Summary

Summary

Summary

Summary

Summary

Summary

Summary



CITY OF STOCKTON PUBLIC WORKS DEPARTMENT
FACILITIES CONDITION ASSESSMENT 06/16-07/16

Exhibit C:
Insurance Requirements
(Facilities Condition Assessment)

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.

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

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

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

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

PER-016 (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

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

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 3 of 14
	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

III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

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

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

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

PER-C15 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/96, 1/1/98
PER-C37 (Sexual Harassment Investigative Procedures) revised from 2/15/93

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

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

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

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 5 of 14
	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, 6/1/95, 1/1/98
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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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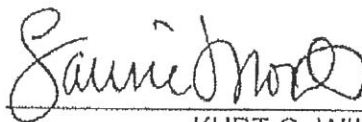
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

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