

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this ___ day of _____ 2023, between the CITY OF STOCKTON, a municipal corporation ("City"), and **O'DELL ENGINEERING** whose address is **1165 SCENIC DRIVE, SUITE A, MODESTO, CA 95350** ("Consultant") for the **CANNERY PARK (2.7 ACRES) (PROJECT NO. WP13270)**, 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 **\$222,542.00** 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 D** and shall otherwise comply with the other provisions of **Exhibit D**.

4. 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 the City of Stockton, its officers, officials, employees, and

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volunteers 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 the City of Stockton, its officers, officials, employees, and volunteers 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.

5. SCHEDULE AND TERM. Consultant shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit C**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **November 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>.

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

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

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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

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be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

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

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

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

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

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

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

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

To Consultant: O'Dell Engineering
1165 Scenic Drive
Suite A
Modesto, CA 95350

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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(Updated 04/24/23)

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

CITY OF STOCKTON

O'DELL ENGINEERING

By: _____
HARRY BLACK
CITY MANAGER

By: _____
Signature

ATTEST:

Print Name

BY: _____
ELIZA R. GARZA, CMC
CITY CLERK

Title: _____

APPROVED AS TO FORM:

BY: _____
DEPUTY CITY ATTORNEY

Cannery Park Scope of Services

Included in this section is the technical scope of work to complete the project as we interpret it. It is organized a bit differently than the scope in the RFP document to help streamline the process and include key scope assignments that may have been overlooked.



Task 1: Meetings and Project Management

1.1 Kick-off Organization & Scoping Meeting

A well-run organizational meeting at the beginning of the project will clear up any unexpected issues before they arise. A meeting will be held with staff, during which our proprietary client communication program is started and the following typical items are discussed:

- Introduce staff and project partners to the design consulting team.
- Review objectives of the project, scope of services, deliverable expectations, project schedule, and milestones.
- Confirm project parameters and limits of work. (Conduct a site review and photo document site conditions.)
- Collect available data and published material.
- Establish meeting and presentation schedules and communication channels with all parties involved.
- Review and list all applicable design/planning standards, opportunities, and/or challenges anticipated.
- Coordinate with agency departments, other agencies, and stakeholders.
- Review project budget and billing requirements.
- Complete custom client communications program.

1.2 Progress Meetings

After each submittal and subsequent staff review period, a progress meeting with the design team will be held. An agenda will be prepared prior to, and minutes will be provided after, each meeting. It is anticipated that there will be a progress meeting each month during the design period and ideally held at the following stages:

- Following the Preliminary Site Plan submittal
- Following the Design Development submittal
- Following the 65%, 95%, and 100% PS&E submittals

1.3 Management

Management of all project design aspects will be covered by the team. The following will be provided:

- A comprehensive design schedule
- Monthly progress update meetings and minutes
- Correspondence between City and design team
- Management of the consultant team quality control measures

Deliverables

- Meeting agendas and Minutes in PDF format
- Customized Client Communication Program in PDF format
- Preliminary project schedule with critical path milestones in PDF format
- Monthly progress reports and invoices



Task 2: Site Analysis/Data Collection & Review

Research objectives will include a detailed review of project history and existing park site information including topographic surveys and soil studies. A site visit will be conducted and site photographs will be taken.

2.1 Contextual Analysis

Analyze existing elements within the proposed site to guide design. Items such as prevailing winds, soil type, local demographics, utilities, and so forth will be reviewed.

2.2 Topographic Surveying & Mapping

Surveying services in support of this project will include topographic surveying of the existing site (50' into the existing park site area) and adjacent street improvements, on-site and off-site utilities as needed for points of connection, and extensive detailing of critical features, including trees, buildings, irrigation equipment, and existing features to remain. The topographic survey data will be collected using the City's existing horizontal and vertical survey control and benchmarks. All information will be collected with the input and collaboration of both internal and external subconsultant specialty disciplines to guarantee a focused, but well-rounded product that rises to meet the needs of each of the project's objectives.

- Establish horizontal survey control for the project based on the NAD83 horizontal datum using the City GPS Control Network. Elevations will be based on the NAVD88 vertical datum using City of Modesto benchmarks.
- Perform cross-section survey of adjoining roadway half-width at 50-foot intervals.
- Perform topographic survey of all hardscape and softscape, including grade breaks, high points, and low points. In flat areas, measure spot elevations in a grid pattern at 50-foot intervals.
- Locate surface-visible utility features and improvements, such as signs, fences, walls, buildings, striping, driveways, walkways, drainages, structures, lights, poles, bollards, general limits of vegetated or landscaped areas, USA markings, vaults, valves, meters, boxes, pedestals, cleanouts, manholes, drain inlets, catch basins, culverts, outfalls, standpipes, irrigation boxes, and heads.

- All trees will be located, including measurement of DBH and dripline. Trees will be given unique identifiers to coordinate subsequent specialist identification and assessment.
- At manholes and accessible structures, measure invert elevation of all gravity storm drains and sewer pipes. Annotate topographic survey drawing with invert elevation, approximate diameter, and orientation of each pipe visible at the time of the survey. Where access is not practical, O'Dell Engineering shall indicate by notation on the mapping deliverable.
- Prepare topographic map at a 1" = 20' scale.

2.3 Boundary Survey & Pre-Construction Monument Preservation (Optional)

- Resolve the location of property boundaries and easements as defined by an analysis of available record maps, title report(s), supporting documents, and physical evidence.
- Perform a field survey to locate monuments that may be disturbed by construction. Located monuments will be referenced to durable, off-site reference marks to enable their replacement if disturbed during construction of the project.
- Prepare and submit a Record of Survey map to the County. The Record of Survey Map will fulfill the pre-construction monument preservation requirements of Section 8771 of the Professional Land Surveyors' Act. The Record of Survey map will also comply with any applicable sections of Section 8762 of the Professional Land Surveyors' Act.

2.4 Geotechnical Investigation

Performing these tests as soon in the process as possible has proven to be advantageous to the design team by allowing the team to make recommendations sooner and to prepare more accurate cost estimates.

- To characterize the subsurface conditions and obtain soil samples for laboratory testing, several soil borings throughout the proposed park of varying depths will be drilled.
- An Engineer/Geologist will direct the sampling and log the boring. The samples will be delivered to the laboratory for evaluation and testing. Standard Penetration Testing (SPT) and Standard California sampling will be performed within the borings to obtain samples and blow count information. The borings will be backfilled according to the City/County permit requirements.
- Following the completion of subsurface exploration, boring logs will be reviewed to assess potential restrictive layers and perform infiltration rate testing at two to three locations.
- Laboratory tests will be performed on representative soil samples obtained from the exploratory borings, which may include moisture content and dry density, grainsize analysis

and plasticity index testing, expansion potential, unconfined compression, R-Value, and landscape suitability.

- Engineering analysis will be prepared and a Geotechnical Report containing the following (but not limited to):
 - » Project description
 - » Summary of subsurface exploration and subsurface conditions
 - » Infiltration rates
 - » Laboratory test results
 - » CBC seismic design parameters for structures (non-site specific)
 - » Foundation recommendations for structures
 - » Recommendations for grading and construction
 - » Pavement section recommendations
 - » Minimum unreinforced flatwork sections
 - » Risk management and limitations
 - » Site Plan with current boring and infiltration test locations
 - » Boring logs with laboratory test results

2.5 Utility Investigation & Coordination

A comprehensive utility investigation will be completed to determine what utilities are available, their locations, and utility depth within the project limits of work. Available as-built and original design drawings will be reviewed, utility request letters will be sent to all applicable utility companies, and site investigation will be used to make determinations. We will work with utilities as necessary to prepare the site for construction efforts. Where feasible, utilities infrastructure will be installed and ore relocated prior to beginning construction.

2.6 Arborist Inspection

O'Dell's International Society of Arboriculture Certified Arborist will review all trees on site and provide data to the team for inclusion of information into the Tree Protection Plan. The review will include tree species, size (diameter at breast height - DBH), general health condition, recommendation for removal or preservation, and any suggested mitigation. The Arborist will also work with the team to determine appropriate protection measures and specification requirements during construction.

Deliverables

- Draft Geotechnical Report in PDF format
- Draft arborist report
- Site plan of topographic survey in PDF format



Task 3: Design Development

3.1 Preliminary Site Plan Development

Following site analysis efforts, the design team will prepare two concept plans illustrating alternative designs for the park. After the designs have been presented to the City for review and comment, a final rendered master plan will be prepared for presentation to the public via a design workshop. Following the workshop, revisions will reflect changes based on site limitations and opportunities, community input, and conversations with City staff about specific design features. This is a crucial step to limit revisions later in the process and to avoid inefficient uses of time and resources. This site plan will be drawn with actual topographic data, to scale, and will be a rendered drawing depicting all proposed park features and amenities.

3.2 Public Outreach - Community Meetings

The O'Dell team will schedule meetings with the public, prepare audio/visual presentations, provide design for meeting announcements, coordinate online announcements, and arrange venues for these meetings. Interactive real-time polling will be used at meetings to gather data from those who are too reserved to speak up, and online surveys will be conducted to solicit input from those who are unable to attend meetings. A total of two meetings will be held—one meeting presenting the desired layout and one meeting presenting the revised design to the Parks and Planning Commission.

3.3 Design Development Drawings (30% PS&E)

The Design Development Drawing package includes drawings to convey general engineering and design concepts. This service will include the following preliminary plan sheets at a minimum:

- Cover sheet and project information
- Site plan
- Existing conditions plan
- Tree protection plan (ISA Arborist reviewed)
- Grading, drainage, and utilities plan
- Site finishes and furnishings plans
- Irrigation plans
- Planting plan
- Electrical plans
- Major construction details
- Shade Structure sections and plans
- Technical specifications table of contents

Deliverables

- Print-ready public meeting flyer in PDF format
- Digital PowerPoint presentation for public meetings
- Raw data from public meetings
- Site plan in PDF format

- 30% drawings in PDF format
- 30% estimates and quantities in PDF format
- Technical specifications TOC in PDF format
- Updated project schedule with critical path milestones



Task 4: Construction Documentation

4.1 Construction Documents (PS&E)

Following the approval of a final site plan, the team will prepare final site improvement plans for permitting. Improvement plans include routine information normally required by governing agencies. The scope of work will include three packages: 65% construction documents with draft specifications, 95% construction documents with updated specifications, and 100% documents including final specifications. This service will include the following tasks:

- Improvement Plans - Plans may include the following sheets but are subject to change as the parameters, needs, and existing conditions of the project formalize:
 - » Cover sheet
 - » Notes and conditions
 - » Site plan
 - » Existing conditions and demolition plan
 - » Tree protection plan (ISA Arborist reviewed)
 - » Underground utilities plan
 - » Grading and drainage plans
 - » Erosion control plans
 - » Horizontal control plan
 - » Site finishes and furnishings plans
 - » Enlargement plans (playground, etc.)
 - » Irrigation plans and water use calculations
 - » Planting plan
 - » Electrical plans and Title 24 calculations
 - » Construction details
 - » Shade Structure sections and plans
 - » As-built drawings as appropriate for reference
- Construction quantities and estimates
- Draft & final technical specifications (City will provide boilerplate specifications)
- Draft & final storm water pollution prevention plan (SWPPP & NPDES permit coordination)

4.2 Bid Package

Following the approval of the 100% PS&E drawings, the team will prepare a final bid package. The bid package will include:

- Front end documents (provided by the City)
- Stamped and signed cover sheet
- Bid forms
- Bid item descriptions

- Final stamped and signed PS&E
- Final stamped and signed technical specifications
- Final cut sheets for important features and materials
- Geotechnical Report
- Structural package (if needed)

Deliverables

- Final Geotechnical Report in PDF format
- Final structural design package in PDF format
- 65%, 95%, & 100% drawings in PDF format
- 65%, 95%, & 100% estimates and quantities in PDF format
- Technical specifications TOC in PDF format
- 65% & 95% updated project schedule with critical path milestones in PDF format
- SWPPP document in PDF format
- Final bid package in PDF, AutoCAD, and Mylar format



Task 5: Bidding & Contract Award

5.1 Bid Services & Project Management

O'Dell Engineering will perform bidding and contract award services to assist the City with selecting the appropriate contractors and product manufacturers. Services include the following: (We can provide additional support as requested.)

- Attend pre-bid meeting
- Respond to RFIs
- Prepare Addenda and Transmittals (as needed)

Deliverables

- Meeting agenda and minutes in PDF format
- RFI responses in PDF format
- Plan revisions in PDF format



Task 6: Construction Support Services

6.1 Site Visits & Construction Communications

O'Dell Engineering will perform construction support services throughout the project's completion. Services include the following: (We can provide additional support as requested.)

- Attend pre-construction meeting
- Review and approve Contractor's schedule, RFIs, and submittals
- Review change orders, shop drawings, and submittals
- Playground safety audit by an in-house Certified Playground Safety Inspector
- Prepare as-built drawings from contractor maintained field drawings

- Construction observation site visits to review site finishes, at irrigation installation phase, for plant review and approval prior to planting, during playground installation, following structural installations but prior to final surface covering, a final punch list walk, etc. Includes the following site visits:
 - » Pre-construction tree protection measure conformance site visit
 - » Site progress visits to review rough grading, site finishes (concrete, surfacing, etc.), irrigation installation, for plant review and approval prior to planting, following playground retrofits, following structural installations but prior to final surface covering
 - » Final project site review and report

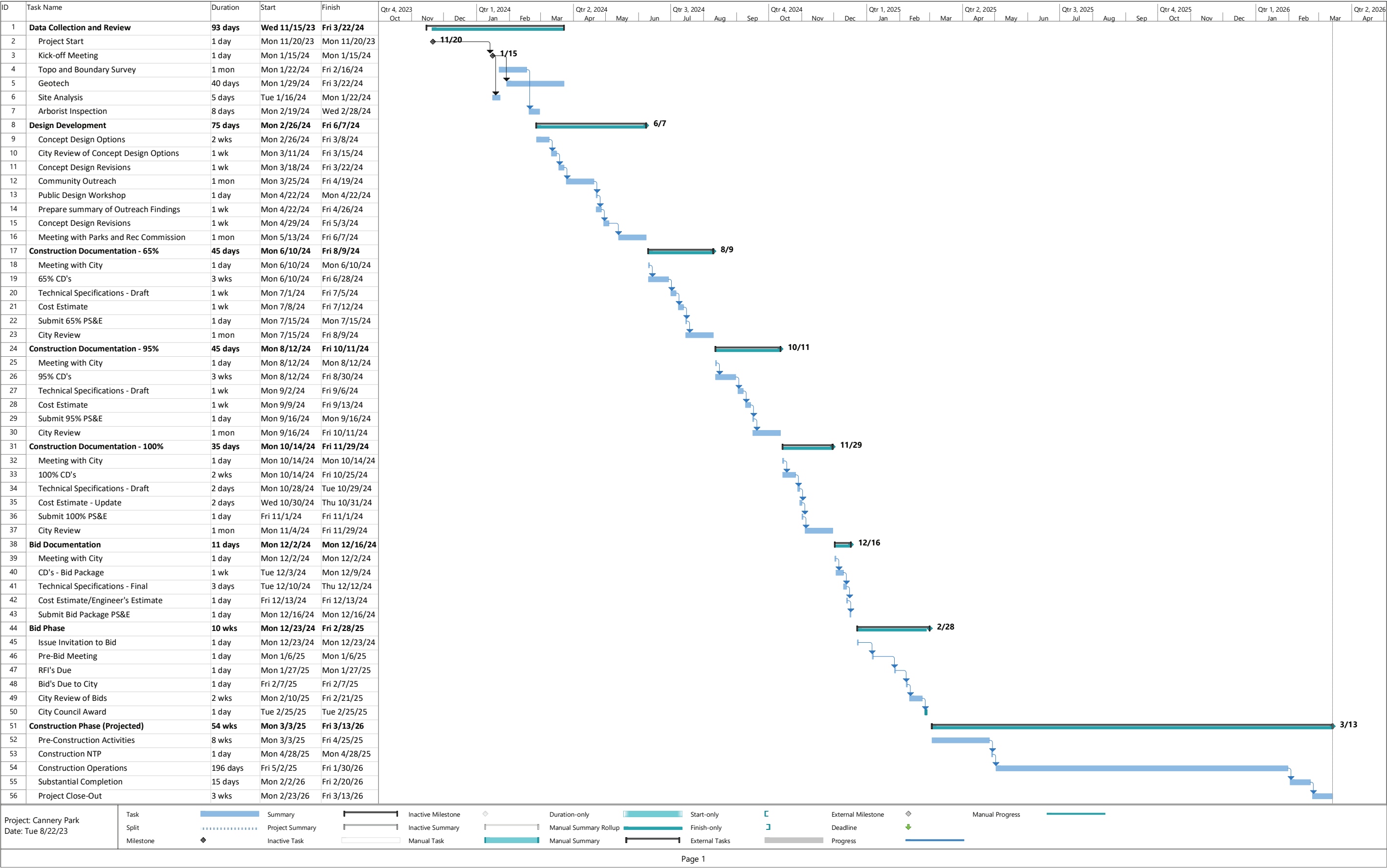
Deliverables

- Meeting agenda and minutes in PDF format
- Submittal & RFI responses in PDF format
- Site observation memos in PDF format
- Playground Audit Report in PDF format
- Supplemental instructions as needed in PDF
- As-built drawings in PDF, AutoCAD, and Mylar format

Limitations and Understandings:

- All governmental/regulatory fees to be provided by the City.
- It is assumed that building permits will be obtained by the contractor.
- It is assumed that environmental planning for the project is complete and that there is no coordination needed for such planning efforts.
- Does not include any adjustments to City standard details.
- Does not include any utility work within the roads.
- This scope does not include revisions to the plans due to site plan changes, and/or significant client requested changes at 65% submittal stage or later, including revisions due to bid results or resulting value engineering efforts.
- It is assumed that all structures will be pre-fabricated and considered deferred submittals for building permit purposes.
- Does not include construction management services.
- Potholing is not included. Utility locations will be based off of as-built drawings and information from utility departments and companies.
- Does not include off-site utility design or coordination.
- Does not include grant administration support.
- Does not include postage costs.

Project Fees by Task																					
PROJECT #: City of Stockton Project No. WP13270																					
PROJECT: Cannery Park (2.7 Acres)																					
CLIENT: City of Stockton																					
DATE: 8/14/2023																					
			O'Dell Engineering													Subcons.					
Tasks			Principal - Chad Kennedy/Dylan Crawford	Senior Civil Engineer - Mike Persak	Engineer 2 - Stephanie Kong	Senior Landscape Architect 2 - Josh Nash	Senior Landscape Architect 2 - Karen Folsom	Landscape Architect 1 - Tyler Fay/Kat Lewis	Landscape Designer 2 - Wanyi Song	Landscape Designer 1 - Ting Li / Beverly Yee	Senior Surveyor 2 - Scott Roberts	Surveyor 2 - Jakeob Coper	Survey Crew 2-man (prevailing wage) - Jeff Ahart/Uriel Montejano	Reimbursables	Reproduction Costs	Structural - Precision	Electrical - HCS	Geotechnical - Kleinfelder	Hours	Task Subtotal	Task Total Fee
			\$280.00	\$215.00	\$180.00	\$200.00	\$200.00	\$170.00	\$145.00	\$135.00	\$190.00	\$150.00	\$396.00								
TASK/DESCRIPTION																					
TASK 1 - PROJECT INITIATION																			78	\$14,080	\$14,080
	1.1	Kick-off Organization & Scoping Meeting				4		8	4										16	\$2,740	\$2,740
	1.2	Progress Meetings	1			8		16											25	\$4,600	\$4,600
	1.3	Management	1	4	4	4		24											37	\$6,740	\$6,740
TASK 2 - SITE ANALYSIS/DATA COLLECTION & REVIEW																			136	\$43,423	\$44,823
	2.1	Contextual analysis	1		1	2		4	4										12	\$2,120	\$2,120
	2.2	Topographic Surveying & Mapping								10	48	24							82	\$18,604	\$18,604
	2.3	Boundary Survey Pre-Construction Monument Preservation			2					4	6	4							16	\$3,604	\$3,604
	2.4	Geotechnical Investigations			2	2			2								\$14,000		6	\$15,050	\$16,450
	2.5	Utility Investigation & Coordination		1	4	2			2										9	\$1,625	\$1,625
	2.6	Arborist Inspection	6			1				4									11	\$2,420	\$2,420
TASK 3 - PRELIMINARY SITE PLAN																			188	\$30,010	\$30,010
	3.1	Site Plan	4			8		12	32	24									80	\$12,640	\$12,640
	3.2	Public Outreach/Community Meeting	2					16	16	6									40	\$6,410	\$6,410
	3.3	Design Development Drawing (30%)	2		2	8		16	32	8									68	\$10,960	\$10,960
TASK 4 - CONSTRUCTION DOCUMENTATION																			523	\$97,430	\$98,990
	4.1.1	65% Construction Documents (PS&E)	3	2	12	20	6	28	48	92						\$4,500	\$4,200		211	\$41,470	\$42,340
	4.1.2	95% Construction Documents (PS&E)	4	2	12	16	8	20	48	88						\$2,200	\$2,100		198	\$35,050	\$35,480
	4.1.3	100% Construction Documents (PS&E)	1	1	4	8	2	8	20	28						\$700	\$700		72	\$12,655	\$12,795
	4.2	Bid Package	1	1	4	4		16	16					1200					42	\$8,255	\$8,375
TASK 5 - BIDDING																			48	\$11,485	\$11,735
	5.1.1	Assist City Staff in Bidding Process	1	1	2	4		4											12	\$2,335	\$2,335
	5.1.2	Attend Pre-Bid Meeting (1 Field Meeting)			4			4	4										12	\$1,980	\$1,980
	5.1.3	Review & Process All RFI's and Bid Addenda	2	2	4	8		8							\$1,500	\$1,000			24	\$7,170	\$7,420
TASK 6 - CONSTRUCTION SUPPORT																			90	\$22,555	\$22,904
	6.1.1	Attend Pre-Construction Meeting (1 Field Meeting)				2			3										5	\$835	\$835
	6.1.2	Review & Process All Shop Drawings and Submittals	1	1	3	6		8	20										39	\$6,495	\$6,495
	6.1.3	Provide Site Review & Prepare Reports on Construction Progress (Approx. 6 Field Meetings)	2	2		12		6	6						\$2,100	\$1,000			28	\$8,380	\$8,690
	6.1.4	Assist in Determining and Processing Request for Information and Change Orders	2		2	8													12	\$2,520	\$2,520
	6.1.5	Make Final Review and Report on Completed Project (1 Field Meeting)	1			2			3										6	\$1,115	\$1,115
	6.1.6	Prepare As-Built Drawings from Contractor's Field Drawings				2		4	12					390					18	\$3,210	\$3,249
TOTAL HOURS			35	17	62	131	16	202	272	250	14	54	28	0	1590				1063		
TOTAL COST			\$9,800	\$3,655	\$11,160	\$26,200	\$3,200	\$34,340	\$39,440	\$33,750	\$2,660	\$8,100	\$11,088	\$0	\$1,590	\$11,000	\$9,000	\$14,000		\$218,983	\$222,542
CONSULTANT MARK-UP 10%														\$0	\$159	\$1,100	\$900	\$1,400			
GRAND TOTAL			\$9,800	\$3,655	\$11,160	\$26,200	\$3,200	\$34,340	\$39,440	\$33,750	\$2,660	\$8,100	\$11,088	\$0	\$1,749	\$12,100	\$9,900	\$15,400			\$222,542



Insurance Requirements for Professional Services

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

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

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

Other Insurance Provisions

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

Additional Insured Status

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

Primary Coverage

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

Umbrella or Excess Policy

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

Notice of Cancellation

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

Waiver of Subrogation

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

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

Self-Insured Retentions

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

Acceptability of Insurers

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

Claims Made Policies

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

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

Verification of Coverage

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

Subcontractors

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

Duration of Coverage

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

Special Risks or Circumstances

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

Certificate Holder Address

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

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

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

EXHIBIT 1

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

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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

EXHIBIT 1

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 2 of 14
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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**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 3 of 14
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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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EXHIBIT 1

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 4 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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otherwise adversely affecting an employee's or non-employee's employment opportunities.

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

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

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

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

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

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EXHIBIT 1

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

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

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

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

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

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

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

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.

- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.

- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

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

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

B. Investigative Guidelines

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

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

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supervisors, about the harassment.

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

VI. RESPONDING TO THE COMPLAINT

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

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

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

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

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

- E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.
- F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

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

VIII. ALTERNATIVE REMEDIES

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

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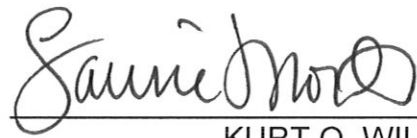
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

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

APPROVED:



KURT O. WILSON
CITY MANAGER

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