

CITY OF STOCKTON  
**STANDARD AGREEMENT**

EXHIBIT 2

Agreement Number:

1. This Agreement is entered into between the City of Stockton ("City") and GOES AND NOCETI CONSTRUCTION, INC. ("Contractor") to provide ON-CALL WATER REPAIR SERVICES as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8:

Commences on:

Terminates on:

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ 1,745,375

4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Insurance
- (c) Exhibit C – General Terms and Conditions
- (d) Exhibit D – Professional Services Special Terms & Conditions
- (e) Exhibit E – Compensation Schedule

**IN WITNESS WHEREOF, the authorized parties have executed this Agreement.**

**CONTRACTOR**

Goes and Noceti Construction, Inc. DBA G&N Construction

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):

*Phil Goes*

*2-26-2020*

Authorized Signature

Date

Phil Goes President

Printed Name and Title of Person Signing

891 N Broadway AVE Stockton, CA 95205

Address

**CITY OF STOCKTON**

Harry Black, City Manager

Date

ATTEST:

Eliza Garza, City Clerk

APPROVED AS TO FORM:

John M. Luebberke, City Attorney

BY:

## STATEMENT OF WORK

### 1. **Project Objectives**

The City of Stockton hereby invites bids to provide all labor, materials, equipment, and perform all work necessary for the ON-CALL WATER REPAIR SERVICES FOR THE WATER FIELD OFFICE as required for a period of five (5) years. This is a five (5) year fixed price contract.

### 2. **Project Scope**

CONTRACTOR shall provide On-call services for various repairs to the City of Stockton's water distribution system. The services will be provided on an as-needed basis through a task on-call process.

1. The services included, but are not limited to:

- a. water main, valve and service line repairs; water meter box
- b. fire hydrant replacements; and restoration of asphalt concrete, curb, gutter, and sidewalk surfaces.
- c. The work shall be performed in accordance with the intent of the Contract Documents, including as stated in the Contract and the Technical and Special Provisions, excluding only the work indicated or specified to be provided by the City or others under separate contract or other arrangement.
- d. In the event of a conflict between the Project Specifications and the City of Stockton Standard Specifications and Plans, the Project Specifications shall take precedence.

2. The work includes the furnishing of all labor, materials, incidentals and equipment necessary for the On-Call Water Repair Services.

Subsoil investigations have not been conducted at the site of the work. The Contractor should visit the site and acquaint himself with all existing conditions. Prior to bidding, contractors may make their own subsurface investigations to satisfy themselves as to site and subsurface conditions, but such subsurface investigations shall be performed only under time schedules and arrangements approved in advance by the Water Field Office.

### 3. Specifications

Item No.	Description	Est. Annual Quantity	Unit	Unit Price	Total Price
1.	Easement Repairs (Water Mains and Service Lines within Easements, Per Job)	5	EA	200	1,000
2.	Remove and Replace Asphalt Concrete Restoration up to 8" Deep	4,000	SF	20	80,000
3.	Remove and Replace Asphalt Concrete Restoration between 8.1" and 13" Deep	900	SF	21	18,900
4.	Remove and Replace Asphalt Concrete Restoration between 13.1" and 16.0" Deep	500	SF	22	11,000
5.	Remove and Replace Existing Concrete Curb and Gutter	50	LF	20	1,000
6.	Remove and Replace Existing Concrete Sidewalk and/or Driveway	300	SF	15	4,500
7.	Various Unidentified Work	1	LS	0	0
8.	4" Domestic Water Main Line Repair	18	EA	2,400	43,200
9.	6" Domestic Water Main Line Repair	18	EA	2,400	43,200
10.	8" Domestic Water Main Line Repair	2	EA	2,400	4,800
11.	12" Domestic Water Main Line Repair	1	EA	3,000	3,000
12.	Remove and Replace 6" Water Gate Valve	1	EA	4,000	4,000
13.	Remove and Replace 8" Water Gate Valve	1	EA	4,500	4,500
14.	Remove and Replace 12" Water Butterfly Valve	1	EA	6,000	6,000
15.	1" Domestic Water Service Line Replacement	15	EA	2,400	36,000
16.	1-1/2" Domestic Water Service Line Replacement	10	EA	2,400	24,000
17.	2" Domestic Water Service Line Replacement	3	EA	2,400	7,200
18.	Water Meter Box (Type B12)	5	EA	150	750
19.	Water Meter Box (Type B30)	3	EA	175	525
20.	Water Meter Box (Type B36)	3	EA	250	750
21.	Fire Hydrants Repair/Replacement	100	HR	300	30,000
22.	Flaggers	25	HR	50	1,250
23.	Emergency Response (Within 2 hours)	5	EA	200	1,000
24.	Emergency Call-Out Surcharge - After- Hours/Weekend/Holiday	150	HR	150	22,500
<b>TOTAL BID: The sum of Items 1 through 24</b>					<b>\$349,075</b>

#### **4. Major Deliverables**

- 4.1 General: Bid Items 1 through # are presented to indicate major categories of the work for purposes of comparative bid analyses, payment breakdown for monthly progress payments. Bid items are not intended to be exclusive descriptions of work categories and the Contractor shall determine and include in its pricing all materials, labor, and equipment necessary to complete each Bid Item (work phase) as shown and specified.

#### **4.2 Duration of Prices**

Quoted prices accepted by the City shall be held good and in effect until the Work is completed and accepted by the City, unless modified by Change Order.

#### **4.3 Bid Items**

Compensation for all equipment, tools, materials, labor, service, travel, and incidentals, and for doing the work and all other items required to complete the Work in conformity with the Contract Documents will be included in the payment provided in this Section unless specifically excluded. No other compensation will be made except for the items listed in the Bid Proposal. Work for which no separate payment has been provided will be considered as a subsidiary obligation of the Contractor, and the cost therefore included in the applicable contract price for the item to which the work applies. All measurements of work done will be made by the inspector. No adjustment in prices will be made where any quantities provided in the Item Description vary from actual quantities, unless the work described and shown in the Contract Documents has been modified by the City.

- 4.3.1 Bid Item 1 – Easement Repairs (Water Mains and Service Lines within Easements, Per Job). Contractor will repair/replace pipes within private properties, and access to private property shall be maintained at all times. For site work that takes more than one day, temporary trench plate or similar excavation bridging devices shall be used to ensure a safe traffic flow (vehicle and pedestrian) and access to the property. If excavation is in the area of a driveway, arrangements shall be made with the resident or property owner in advance to allow vehicles to be removed prior to the start of excavation. If excavation is in an easement, Contractor will contact the property owner prior to excavation. Price is separate from repair work to be completed to water main or service line. Cost includes work exclusive to working in easements and private property, such as, the removal and restoration of driveways, lawns, fencing and backyards. Contractor shall restore the area to its previous condition.

Payment will be made per location at each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.2 Bid Item 2 – Remove and Replace Asphalt Concrete. Contractor shall be responsible for all costs associated with the removal, transportation and disposal of asphalt concrete. All material removed during the excavation process shall become the property of the Contractor and shall be disposed of properly and recycled, when possible. Asphalt concrete surfaces shall be placed and compacted on the final surface of the roadway excavation in accordance with City Standard Specification Section 100. The thickness shall match the existing material around it. Final grade shall match existing grade for drainage purposes. The asphalt concrete patch shall be placed as required by City Standard Specifications Section 100. Cost includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling, and saw cutting of pavement.

Payment will be made per square foot price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.3 Bid Item 3 – Remove and Replace Asphalt Concrete. Contractor shall be responsible for all costs associated with the removal, transportation and disposal of asphalt concrete. All material removed during the excavation process shall become the property of the Contractor and shall be disposed of properly and recycled, when possible. Asphalt concrete surfaces shall be placed and compacted on the final surface of the roadway excavation in accordance with City Standard Specification Section 100. The thickness shall match the existing material around it. Final grade shall match existing grade for drainage purposes. The asphalt concrete patch shall be placed as required by City Standard Specifications Section 100. Cost includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling, and saw cutting of pavement.

Payment will be made per square foot price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.4 Bid Item 4 – Remove and Replace Asphalt Concrete. Contractor shall be responsible for all costs associated with the removal, transportation and disposal of asphalt concrete. All material removed during the excavation process shall become the property of the Contractor and shall be disposed of properly and recycled, when possible. Asphalt concrete surfaces shall be placed and compacted on the final surface of the roadway excavation in accordance with City Standard Specification Section 100. The thickness shall match the existing material around it. Final grade shall match existing grade for drainage purposes. The asphalt concrete patch shall be placed as required by City Standard Specifications Section 100. Cost includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling, and saw cutting of pavement.

Payment will be made per square foot price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.5 Bid Item 5 – Remove and Replace Existing Concrete Curb and Gutter. Contractor shall be responsible for all costs associated with the removal, transportation and disposal of concrete debris. All material removed during the excavation process shall become the property of the Contractor and shall be disposed of properly and recycled where possible. Class II 3/4" aggregate base (AB) shall be used underlying the concrete pavement to a depth required by City of Stockton Standard Specifications. The AB shall be placed and compacted to a minimum of ninety-five percent (95%) of the maximum dry density as determined by ASTM D1557. Upon completion of backfilling, curb and gutter shall be replaced per City Standard Specifications. Any concrete curb and gutter damaged by Contractor in areas where City feels damage was avoidable will be replaced at Contractor's expense. Cost includes mobilization, traffic control, erosion control, sheeting and shoring, and saw cutting of concrete.

Payment will be made per lineal foot price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.6 Bid Item 6 – Remove and Replace Existing Sidewalk and/or Driveway. Contractor shall be responsible for all costs associated with the removal, transportation and disposal of concrete debris. All material removed during the excavation process shall become the property of the Contractor and shall be disposed of properly and recycled where possible. Class II 3/4"

aggregate base (AB) shall be used underlying the concrete pavement to a depth required by City of Stockton Standard Specifications. The AB shall be placed and compacted to a minimum of ninety-five percent (95%) of the maximum dry density as determined by ASTM D1557. Upon completion of backfilling, sidewalk and driveway shall be replaced per City Standard Specifications with a 6" thickness. Any sidewalk or driveway damaged by Contractor in areas where City feels damage was avoidable will be replaced at Contractor's expense. Cost includes mobilization, traffic control, erosion control, sheeting and shoring, and saw cutting of concrete.

Payment will be made per square foot price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.7 Bid Item 7 – Various Unidentified Work. Contractor shall obtain work tasks and written approval from the City prior to starting any work, relative to work tasks and special unidentified fees not covered by bid items 1 through 6 and 8 through 24.

Payment will be made per the bid schedule, in accordance with the accepted Contractor's Cost Breakdown, and shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and or performing all work involved, as specified and directed by the City, and no additional compensation will be allowed.

- 4.3.8 Bid Item 8 – 4" Domestic Water Main Repair. City will only authorize excavations of a size necessary in order to make the required domestic main line repair. The excavation shall comply with City Standard Dwg. No. 50 or 50A, depending on the size of the largest exposed pipe. All materials and methods used by Contractor will conform to City of Stockton Standards and Specifications Section 76. Includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, testing, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.9 Bid Item 9 – 6" Domestic Water Main Repair. City will only authorize excavations of a size necessary in order to make the required domestic main line repair. The excavation shall comply with City Standard Dwg. No. 50 or 50A, depending on the size of the largest exposed pipe. All materials and methods used by Contractor will conform to City of Stockton Standards and Specifications Section 76. Includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, testing, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.10 Bid Item 10 – 8" Domestic Water Main Repair. City will only authorize excavations of a size necessary in order to make the required domestic main line repair. The excavation shall comply with City Standard Dwg. No. 50 or 50A, depending on the size of the largest exposed pipe. All materials and methods used by Contractor will conform to City of Stockton Standards and Specifications Section 76. Includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, testing, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.



- 4.3.11 Bid Item 11 – 12” Domestic Water Main Repair. City will only authorize excavations of a size necessary in order to make the required domestic main line repair. The excavation shall comply with City Standard Dwg. No. 50 or 50A, depending on the size of the largest exposed pipe. All materials and methods used by Contractor will conform to City of Stockton Standards and Specifications Section 76. Includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, testing, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.12 Bid Item 12 – Remove and Replace 6” Gate Valve. Replacement of valve shall comply with City of Stockton Standard Specifications and Plans Dwg No. 99, with the exception that the valve box and lid shall be a Type G8. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, disinfection, backfilling, new extension, and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.13 Bid Item 13 – Remove and Replace 8” Gate Valve. Replacement of valve shall comply with City of Stockton Standard Specifications and Plans Dwg No. 99, with the exception that the valve box and lid shall be a Type G8. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, disinfection, backfilling, new extension, and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.14 Bid Item 14 – Remove and Replace 12” Butterfly Valve. Replacement of valve shall comply with City of Stockton Standard Specifications and Plans Dwg No. 99, with the exception that the valve box and lid shall be a Type G8. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, disinfection, backfilling, new extension, and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.15 Bid Item 15 – 1” Domestic Water Service Line Replacement. Contractor shall replace a domestic water service as follows: The material used in most service lines maintained by City is Ultra High Molecular Weight (UHMW) Polyethylene



(PE). When a service line fails, a new line is pulled through the old one using a cabled wedge-shaped splitter that splits and expands the old pipe, while pulling the new pipe through the old. This method of replacement must be used by Contractor, unless site conditions prevent using this method. Written authorization from the City's Representative must be received before Contractor uses any other method of replacement. The existing service line shall be replaced and installed with UHMW PE per City Standard Specification Section 76. Leak testing shall be performed prior to backfill operations. At the main, if the saddle is damaged, as determined by City, it shall be replaced in kind. Base water service repair, an excavation at the corporation stop less than two hundred (200) cubic feet and not over five (5) feet in depth with minor hand digging at the meter and a pull distance of less than forty (40) feet. City will only authorize excavations of a size necessary to provide access to perform work. If the Contractor must increase the size of excavation because of a nonstandard corporation stop location (other than as shown in City Standard Dwg No. 5), City will compensate Contractor for additional excavation. This repair will also require new stainless-steel inserts and a new angle meter stop. All materials are considered incidental to the work and will not be compensated separately. Pipe used by Contractor shall conform to City Standard Specification Section 76. All materials used by Contractor shall conform to City Standard Dwg No. 94 and 94A. The excavation shall comply with City Standard Dwg No. 50 or 50A depending on the size of the largest exposed pipe. Bid price includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.16 Bid Item 16 – 1-1/2" Domestic Water Service Line Replacement. Contractor shall replace a domestic water service as follows: The material used in most service lines maintained by City is Ultra High Molecular Weight (UHMW) Polyethylene (PE). When a service line fails, a new line is pulled through the old one using a cabled wedge-shaped splitter that splits and expands the old pipe, while pulling the new pipe through the old. This method of replacement must be used by Contractor, unless site conditions prevent using this method. Written authorization from the City's Representative must be received before Contractor uses any other method of replacement. The existing service line shall be replaced and installed with UHMW PE per City Standard Specification Section 76. Leak testing shall be performed prior to backfill operations. At the main, if the saddle is damaged, as determined by City, it shall be replaced in kind. Base water service repair, an excavation at the corporation stop less than two hundred (200) cubic feet and not over five (5) feet in depth with minor hand digging at the meter and a pull distance of less than forty (40) feet. City will only authorize excavations of a size necessary to provide access to perform work. If the

Contractor must increase the size of excavation because of a nonstandard corporation stop location (other than as shown in City Standard Dwg No. 5), City will compensate Contractor for additional excavation. This repair will also require new stainless-steel inserts and a new angle meter stop. All materials are considered incidental to the work and will not be compensated separately. Pipe used by Contractor shall conform to City Standard Specification Section 76. All materials used by Contractor shall conform to City Standard Dwg No. 94 and 94A. The excavation shall comply with City Standard Dwg No. 50 or 50A depending on the size of the largest exposed pipe. Bid price includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.17 Bid Item 17 – 2" Domestic Water Service Line Replacement. Contractor shall replace a domestic water service as follows: The material used in most service lines maintained by City is Ultra High Molecular Weight (UHMW) Polyethylene (PE). When a service line fails, a new line is pulled through the old one using a cabled wedge-shaped splitter that splits and expands the old pipe, while pulling the new pipe through the old. This method of replacement must be used by Contractor, unless site conditions prevent using this method. Written authorization from the City's Representative must be received before Contractor uses any other method of replacement. The existing service line shall be replaced and installed with UHMW PE per City Standard Specification Section 76. Leak testing shall be performed prior to backfill operations. At the main, if the saddle is damaged, as determined by City, it shall be replaced in kind. Base water service repair, an excavation at the corporation stop less than two hundred (200) cubic feet and not over five (5) feet in depth with minor hand digging at the meter and a pull distance of less than forty (40) feet. City will only authorize excavations of a size necessary to provide access to perform work. If the Contractor must increase the size of excavation because of a nonstandard corporation stop location (other than as shown in City Standard Dwg No. 5), City will compensate Contractor for additional excavation. This repair will also require new stainless-steel inserts and a new angle meter stop. All materials are considered incidental to the work and will not be compensated separately. Pipe used by Contractor shall conform to City Standard Specification Section 76. All materials used by Contractor shall conform to City Standard Dwg No. 94 and 94A. The excavation shall comply with City Standard Dwg No. 50 or 50A depending on the size of the largest exposed pipe. Bid price includes all labor and materials, tools, equipment and incidentals needed to perform the actual disinfection of tools and equipment in compliance with AWWA Standards. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, backfilling and saw cutting of pavement.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.18 Bid Item 18 – Water Meter Box (Type B12). Replacement of meter boxes shall comply with City of Stockton Standard Specifications and Plans Dwg No. 94A. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, and backfilling.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.19 Bid Item 19 – Water Meter Box (Type B30). Replacement of meter boxes shall comply with City of Stockton Standard Specifications and Plans Dwg No. 94A. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, and backfilling.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.20 Bid Item 20 – Water Meter Box (Type B36). Replacement of meter boxes shall comply with City of Stockton Standard Specifications and Plans Dwg No. 94A. When replaced, the top of the box shall be level with finished grade. Cost also includes mobilization, traffic control, erosion control, sheeting and shoring, and backfilling.

Payment will be made per each price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.21 Bid Item 21 – Fire Hydrants Repair/Replacement. Repair or replacement of fire hydrants shall comply with City of Stockton Standard Dwg. 101. For standard repair/replacement, City will provide all parts. For non-standard type of emergency repair, Contractor will be responsible to provide parts, which will be negotiated and paid for in accordance with Bid Schedule for Various Unidentified Work.

Payment will be made per hour price for job as given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.22 Bid Item 22 – Flaggers. Includes the cost associated with the need of flaggers, per job, to ensure the safe passage of vehicles and pedestrians around a job site for the duration of the repair or until such time that roadway can be re-opened to normal traffic flows. Flaggers must be trained and possess the

necessary certifications. Contractor shall provide traffic control plan showing the required flaggers for each job/task.

Payment will be made per hour price for the job/task, not flagger, given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.23 Bid Item 23 – Emergency Response (Within 2 hours). Includes cost associated with responding to an emergency repair within two hours of being notified by City during normal working hours. The entire crew must be mobilized and at the job site ready to start work within two hours of notification. This is to be utilized by the City staff as an emergency repair during normal hours. If work goes beyond normal working hours, After-hours/Weekend/Holiday becomes effective and overtime (OT) is paid for on an hourly rate in accordance with Bid Schedule for Emergency Call- Out Surcharge.

Payment will be made per each occurrence for entire crew at the price given in the Bid Schedule, in accordance with the accepted Contractor's Cost Breakdown.

- 4.3.24 Bid Item 24 – Emergency Call-Out Surcharge – After-hours/Weekend/Holiday. Includes cost associated with responding to an emergency repair during after-hours, weekends or holidays. This means that if crew is called to work during after-hours, weekends and holidays, the crew will be paid overtime on an hourly rate. The entire crew must be mobilized and at the job site ready to start work within two (2) hours. City's work schedule is referred to as a 9/80 schedule, where hours are adjusted so that employees work 80 hours over the course of 9 workdays, rather than 10 days. City offices are closed every other Friday. After hours will be determined by the City and Contractor prior to start of the Contract.

Payment will be made on a per hourly basis for the crew (not individually) per the Bid Schedule, and in accordance with the accepted Contractor's Cost Breakdown.

## **5. Tasks That Support the Deliverables**

Final inspection and acceptance shall be at destination. Although source inspection by the City is not anticipated, the City reserves the right to conduct such inspection as it deems appropriate.

## **6. Internal and External Standards and Guidelines**

The performance of said work and the furnishing of said materials shall be executed in accordance with section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Motion No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

By submitting a bid, bidder guarantees that the product they propose to furnish shall be of the highest quality and shall meet the intent of the specifications free from defects in material and workmanship. The City shall have the right to reject any product, which does not conform to such guarantee, and return same, at Vendors' expense, for correction or replacement.

**7. Criteria of Acceptance for Deliverables**

In addition to the resident inspector or resident manager or resident engineer, the City may employ one or more inspectors to observe the Work and to act in matters of construction under this Contract. An inspector is not authorized to revoke, alter, or waive any requirements of the specifications. The inspector is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract Documents. The inspector shall have the authority to reject material or, in any emergency, suspend the Work. The Contractor may appeal any such issue with which it disagrees to the inspector for decision by the Deputy Director of Water.

Separate and independent from the inspection above, the project may be inspected by Building Officials for code compliance. Such inspectors shall have the authority provided to them by local jurisdiction.

Inspector will have authority to disapprove or reject Work which inspector believes to be defective, or that inspector believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Inspector will also have authority to require special inspection or testing of the Work as provided in this section, whether or not the Work is fabricated, installed, or completed General Conditions 00700-7 Contractor shall give inspector timely notice of readiness of the Work for all required

inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish inspector the required certificates of inspection or approval. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City's and inspector's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such

inspections, tests, or approvals shall be performed by organizations acceptable to.)

**8. Notices**

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

<b>Contractor:</b>	G&N Construction	<b>City:</b>	City of Stockton
	Attn: Phil Goes		Attn: City Manager
	891 N Boradway AVE		425 N. El Dorado Street
	Stockton, CA 95205		Stockton, CA 95202

**9. Key Personnel**

**WATER FIELD OFFICE**  
**7400 WEST LANE**  
**STOCKTON, CA 95210**

**10. Option to Renew.**

5-Year fixed price contract.



**NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.**

### **Insurance Requirements for Construction Contracts**

Contractor shall procure and maintain for the duration of the contract, *and for five (5) years thereafter*, 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 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 (ISO) 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 CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Surety Bonds** as described below.
5. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the contractor 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 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.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City of Stockton Risk Services. At the option of the City of Stockton, either: the contractor shall cause the insurer to reduce or eliminate such self-insured retentions as respects the City of Stockton, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City of Stockton guaranteeing payment of losses and related investigations, claim administration, and defense expenses. 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.

### ***Other Insurance Provisions***

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

1. **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 and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. 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 **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions 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.

2. For any claims related to this project, the **Contractor's insurance coverage shall be endorsed as primary** insurance coverage 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. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

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

***Claims Made Policies – (Note – applicable only to professional and/or pollution liability)***

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution 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 contract 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, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

### ***Waiver of Subrogation***

**Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services 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.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

### ***Subcontractors***

Contractor 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. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

### ***Surety Bonds***

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond (or Labor and Material bond)
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to one hundred percent (100%) of the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

### ***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 circumstances.

### ***Certificate Holder Address***

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

City of Stockton  
400 E Main Street, 3rd Floor – HR

Attn: City Risk Services  
Stockton, CA 95202

## GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree



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 Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

**6. Timeliness.** Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

**7. Changes.** Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

**8. Amendment.** No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

**9. Contractor's Status.**

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's

control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

## **10. Subcontractor.**

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

## **11. Termination.**

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

13. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

14. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. **Records and Audits.**

Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

21. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. **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.

23. **No Personal Liability.** No official or employee of City shall be personally liable

to Contractor in the event of any default or breach by the City or for any amount due Contractor.

**24. Severability.** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**25. Non-Discrimination.** During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. 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 requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

**26. Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

**27. Taxes and Charges.** Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

**28. Cumulative Rights.** Any specific right or remedy provided in this Agreement will

not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

**29. Advice of Attorney.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

**30. Heading Not Controlling.** Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**31. Entire Agreement, Integration, and Modification.**

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

**32. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

**33. Authority.** The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.



## PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. **General.** The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Time for Performance.**

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other

losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

#### **4. Standard of Performance**

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

#### **5. Compensation**

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed

basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

## **6. Personnel**

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

## **7. Reports and Information**

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

**8. Findings Confidential**

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

**9. Copyright**

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

**10. Deliverables**

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

## COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

### 1. Project Price

1.1 The maximum the Contractor shall be paid on this Agreement is \$ 1,745,375 (hereafter the “not to exceed” amount). The “not to exceed” amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii or iii below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City’s needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the City’s travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no markup added to the actual cost.

1.3 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the “not to exceed” amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

1.4 If work is completed before the “not to exceed” amount is reached, the Contractor’s compensation will be based on the Contractor’s invoices previously submitted for acceptable work performed and approved.

1.5 Subcontractor Costs: Compensation for subcontractors shall be limited to the same restrictions imposed on the Contractor. Maximum markup Contractor may apply to subcontractor fees, minus reimbursable expenses, shall not exceed 0 %.



2. **Task Price.** Below is the price for annual services and reimbursable expenses as described in Statement of Work of this Agreement.

Item No.	Description	Est. Quantity	Unit	Unit Price	Total Price
1.	Easement Repairs (Water Mains and Service Lines within Easements, Per Job)	5	EA	200	1,000
2.	Remove and Replace Asphalt Concrete Restoration up to 8" Deep	4,000	SF	20	80,000
3.	Remove and Replace Asphalt Concrete Restoration between 8.1" and 13" Deep	900	SF	21	18,900
4.	Remove and Replace Asphalt Concrete Restoration between 13.1" and 16.0" Deep	500	SF	22	11,000
5.	Remove and Replace Existing Concrete Curb and Gutter	50	LF	20	1,000
6.	Remove and Replace Existing Concrete Sidewalk and/or Driveway	300	SF	15	4,500
7.	Various Unidentified Work	1	LS	0	0
8.	4" Domestic Water Main Line Repair	18	EA	2,400	43,200
9.	6" Domestic Water Main Line Repair	18	EA	2,400	43,200
10.	8" Domestic Water Main Line Repair	2	EA	2,400	4,800
11.	12" Domestic Water Main Line Repair	1	EA	3,000	3,000
12.	Remove and Replace 6" Water Gate Valve	1	EA	4,000	4,000
13.	Remove and Replace 8" Water Gate Valve	1	EA	4,500	4,500
14.	Remove and Replace 12" Water Butterfly Valve	1	EA	6,000	6,000
15.	1" Domestic Water Service Line Replacement	15	EA	2,400	36,000
16.	1-1/2" Domestic Water Service Line Replacement	10	EA	2,400	24,000
17.	2" Domestic Water Service Line Replacement	3	EA	2,400	7,200
18.	Water Meter Box (Type B12)	5	EA	150	750
19.	Water Meter Box (Type B30)	3	EA	175	525
20.	Water Meter Box (Type B36)	3	EA	250	750
21.	Fire Hydrants Repair/Replacement	100	HR	300	30,000
22.	Flaggers	25	HR	50	1,250
23.	Emergency Response (Within 2 hours)	5	EA	200	1,000
24.	Emergency Call-Out Surcharge - After-Hours/Weekend/Holiday	150	HR	150	22,500
<b>TOTAL BID: The sum of Items 1 through 24</b>					<b>\$349,075</b>

2. **Invoice to Address.** Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton MUD Department  
 Attention: Water Field Office  
 7400 West Lane  
 Stockton, CA 95210

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

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

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

**I. PURPOSE**

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

**II. POLICY**

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

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

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

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**III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT**

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

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

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

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

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

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

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

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

**D. Affordable Care Act (ACA) Anti-Retaliation**

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

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

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

**IV. REPORTING AND COMPLAINT PROCEDURES**

**A. Immediate Action Required**

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

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

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment

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



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

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

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

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

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

**V. INVESTIGATION PROCEDURES**

**A. Determination of Responsibility for Investigation**

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

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

**B. Investigative Guidelines**

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

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

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supervisors, about the harassment.

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

**VI. RESPONDING TO THE COMPLAINT**

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

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

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

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

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

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

## **VII. DISCIPLINE**

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

## **VIII. ALTERNATIVE REMEDIES**

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

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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

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	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

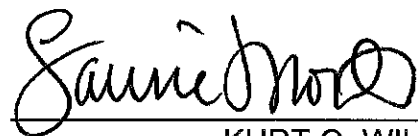
PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

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