

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this ___ day of _____ 2025, between the CITY OF STOCKTON, a municipal corporation ("CITY), and **MIDSTATE BARRIER, INC.,** a **STATE OF CALIFORNIA CORPORATION,** with a business address at **P.O. BOX 30550 STOCKTON, CA 95213** hereinafter called "CONTRACTOR.," THIS CONTRACT is for the **ON-CALL GUARDRAIL REPAIR, PROJECT NO. OM-24-118,** hereinafter referred to as "SERVICE".

RECITALS

- A. CONTRACTOR represents that it is licensed in the State of California and is qualified, willing and able to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. CONTRACTOR represents that it is registered pursuant to Labor Code Section 1725.5 and will register annually with the Department of Industrial Relations, if the services have a wage determination for the services outlined in the SCOPE OF WORK section of this Contract.
- C. CONTRACTOR represents that it will pay all required prevailing wages under California Labor Code for all services provided that have a wage determination.
- D. CITY finds it necessary and advisable to use the services of the CONTRACTOR for the purposes provided in this Contract.

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

1. SCOPE OF SERVICES. Subject to the terms and conditions set forth in this Contract, CONTRACTOR shall undertake and complete the services described in **Exhibit A (scope and specifications).** CONTRACTOR shall provide said services at the time, place, and in the manner specified in **Exhibit A** and compatible with the standards of the profession. CONTRACTOR agrees that it shall provide fully complete services including all labor, materials, tools, equipment and insurance required and that are acceptable to the CITY.

2. COMPENSATION. CITY shall pay CONTRACTOR for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B (fee schedule),** which is attached to this Contract and incorporated by this reference. CONTRACTOR agrees this fee is for full remuneration for performing all services and furnishing all staffing, materials and tools called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of CONTRACTOR'S invoice for completed work. Total compensation for services and

reimbursement for costs shall not exceed **\$600,000.00** or as otherwise mutually agreed to in a Contract Amendment.

Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

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

3. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C (Insurance Requirements and Forms)** which is attached to this contract and incorporated by this reference, and shall otherwise comply with the other provisions of **Exhibit C**. Maintenance of proper insurance coverage is a material element of this contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in **Exhibit C**, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONTRACTOR.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. CONTRACTOR further agrees to include these same provisions with any subcontractor regardless of tier. A copy of the CITY Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the CITY.

4. INDEMNITY AND HOLD HARMLESS. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or

its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

5. SCHEDULE AND TERM. CONTRACTOR shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit A**, which is attached to this Contract and incorporated by this reference. This contract shall commence on the date written above and shall expire on **JUNE 30, 2028**, unless extended by mutual agreement through the issuance of a Contract Amendment. This contract provides for two (2), one (1) year extensions at the same rates and terms as outlined in **Exhibit A** and **Exhibit B**.

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

a. TITLE VI

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

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

b. DISCRIMINATION AND HARASSMENT POLICY

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

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE

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

- i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>
- f. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to CITY the sum of TWENTY FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

- iii. The CONTRACTOR to whom the contract is awarded shall insure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

f. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

7. CONTRACT AMENDMENTS. CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Project Manager to be necessary or advisable and to require such extra work as may be determined by the Project Manager to be required for the proper completion of the whole work contemplated.

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

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

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

10. TERMINATION. This Agreement is effective on the Effective Date. The City may terminate this Contract and work pursuant to any of all scope of works at any time by mailing a notice in writing to Contractor. The Contract shall then be deemed terminated and no further work shall be performed by Contractor. If the Contract is so terminated, the Contractor shall be paid for that percentage of work actually completed at the time the notice of termination is received.

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

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

- i. It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR'S personnel.
- ii. As an independent contractor, CONTRACTOR hereby indemnifies and holds CITY harmless from any and all claims that may be made against the CITY based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

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

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

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

To CONTRACTOR:	Midstate Barrier, Inc. P.O. Box 30550 Stockton, CA 95213	To City:	Public Works Director City of Stockton 22 E. Weber Ave., Rm. 301 Stockton, CA 95202
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15. LICENSES, CERTIFICATIONS, AND PERMITS. Prior to the CITY'S execution of this Contract and prior to the CONTRACTOR engaging in any operation or activity set forth in this Contract, CONTRACTOR shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. CONTRACTOR covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

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

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

17. CONFIDENTIALITY. CONTRACTOR shall exercise reasonable precautions to prevent the unauthorized disclosure and use of CITY'S reports, information, or conclusions.

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

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

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

21. DISPUTE RESOLUTION. Prior to undertaking any litigation, the Parties shall make reasonable efforts to resolve all disputes informally, including by means of a conference between senior managers of each Party having authority to resolve the dispute.

1. Venue
Any controversy or claim between the Parties shall be determined with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.
2. If any litigation action or proceeding is commenced in connection with this Agreement, the prevailing Party, as determined by the court, shall be entitled to reasonable attorneys' fees (including allocated costs for in-house legal services), costs and necessary disbursements incurred in such action or proceeding.

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

23. INTEGRATION AND MODIFICATION. The response by CONTRACTOR to the Request for Proposals or Qualifications and the Request for Proposals or Qualifications on file with the CITY are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract

that shall supersede such response to Request for Proposals or Qualifications. This Contract represents the entire integrated agreement between CONTRACTOR and CITY, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by CONTRACTOR and CITY. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

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

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

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

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

CITY OF STOCKTON

MIDSTATE BARRIER, INC.

By: _____
STEVE COLANGELO
INTERIM CITY MANAGER

By:  _____
Signature

ATTEST:

Dale R. Breen

Print Name

By: _____
KATHERINE ROLAND, CMC, CPMC
CITY CLERK

Title: President

APPROVED AS TO FORM:

By: _____
ASSISTANT CITY ATTORNEY

1. INTRODUCTION

The City of Stockton (City) is seeking proposals to contract with a State-licensed contractor qualified to provide citywide on-call repair services for the On-Call Guardrail Repair project. The selected contractor shall remove damaged, furnish, and install new guardrails at various locations citywide. City staff will provide contractor a list of damaged guardrail(s).

The City shall issue a contract to the successful bidder for an initial three-year period. The contract may be extended by mutual agreement through the issuance of a Contract Change Order. This contract provides for two (2), one (1) year extensions. If the contract is extended, the unit price shall remain the same for the first three (3) years of the service. If the contract is extended for a fourth and fifth year, the unit price shall be increased by 2.5% annually. The City will award a three (3) year contract to the Contractor whose offer represents the best value to the City with cost and other factors considered. The anticipated maximum compensation for this contract per year, if awarded, is estimated to be \$200,000.

2. BACKGROUND

The City is responsible for the maintenance of numerous guardrails and crash cushion systems. Due to vehicle accidents, the City encounters numerous damaged guardrails throughout the City with varying severity. The selected contractor will enter into a Contractor Services Agreement and will perform work as described in the Scope of Services, **Attachment A and B**.

3. SCOPE OF WORK

The On-Call Guardrail Repair project will replace damaged guardrail sections, posts, terminals, and crash cushion systems throughout the City. The Contractor shall provide all labor, materials, equipment, and traffic control necessary for the replacement of guardrail and crash cushion systems at various locations within City limits. Services shall be provided as requested by the City of Stockton Public Works Department.

4. PROJECT GENERAL INFORMATION

A. Proposal Submission

Proposals shall be submitted no later than 3:00 PM on March 5, 2025, to:

Katrina Tavares
City of Stockton
1465 S Lincoln St
Stockton, CA 95206

The proposal should be firmly sealed in an envelope which will clearly be marked on the outside with “**ON-CALL GUARDRAIL REPAIR**” for the City of Stockton (**PROJECT NO. OM-24-118**). The cost proposal must be in a sealed envelope separate from the proposal. Late Proposals will not be accepted. An electronic copy of the proposal shall be emailed to Katrina Tavares at Katrina.Tavares@stocktonca.gov and Adriana Garibay at Adriana.Garibay@stocktonca.gov. The electronic submittal should not include the cost proposal.

B. Selection Schedule

<u>Event</u>	<u>Date</u>
Advertise RFP	February 6, 2025
Written Questions submitted by	February 20, 2025
Proposals due	March 5, 2025, by 3:00 PM

C. Acceptance or Rejection of Proposals

The City reserves the right to negotiate an agreement with the firm submitting the highest-ranking proposal. Also, the City reserves the right to reject any and all proposals or to waive any irregularity in a proposal if it is deemed to be in the best interest of the City. Failure to submit all requested information could be grounds to reject the proposal.

D. Proposals Questions and Requests for Clarification

Any questions or requests for clarification shall be submitted in writing to:

adriana.garibay@stocktonca.gov

Requests for clarification shall be submitted at least seven (7) business days prior to the proposal due date. If a response warrants an addendum to the RFP, such addendum will be posted on Bid Flash at least two days prior to the proposal due date. It is the proposer's responsibility to check the website for any addendums or responses to questions. The website address is as follows:

https://www.stocktonca.gov/business/contracts_purchasing/bidflash/index.php

E. Causes for Disqualification

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

- a. Evidence of collusion among proponents.
- b. Any attempt to improperly influence any member of the evaluation panel.
- c. Any attempt to communicate in any manner with a City of Stockton elected official during the RFP/bid process will, and shall be, just cause for disqualification/rejection of proponent's proposal/Proponent's bid submittal and considered non-responsive.
- d. A proponent's default in any operation of a professional services agreement which resulted in termination of that agreement; and/or
- e. Existence of any lawsuit, unresolved contractual claim, or dispute between proponent and the City.
- f. No person, firm, or corporation shall be allowed to make, file or be interested in more than one bid for the same supplies, services, or both; provided, however, that subcontract bids to the principal bidders are excluded from the requirements of this section: Section 3.68.120 of the Municipal Code.

F. Licensing Requirements & Permits

The Contractor's attention is directed to Sections 5-1.20B, "Permits, Licenses, Agreements, and Certifications", of the Caltrans Specifications.

- **Contractor's License** – Contractor shall possess a valid California 'Class A – General Engineering' Contractor's license and maintain it throughout the duration of the contract.
- **Business License** – A City of Stockton business license is not required to submit a proposal; however, one is required to perform any work within City limits. Contractor shall possess prior to execution of the contract and maintain throughout the duration of the contract, a valid City of Stockton business license. Please contact City of Stockton Business License Customer Services at (209) 937-8313.
- **City of Stockton Encroachment Permit** – Contractor shall obtain a City of Stockton encroachment permit and pay all required fees from the affected owners of right-of-way. Permit and fees must be obtained from the City Permit Center at (209) 937-8366 before the start of construction. The Encroachment Permits are renewed and paid yearly for the duration of the contract. Prior to obtaining the encroachment permit, the proposed traffic control plans must be approved by the Engineer.
- **Caltrans Encroachment Permit** – Contractor shall obtain a Caltrans encroachment permit, if needed. The City is responsible for all permit fees.
- **San Joaquin County Encroachment Permit** – Obtain permit from the County when working in their right-of-way. Contractor shall begin work in City right-of-way while awaiting encroachment permit from San Joaquin County. The City is responsible for all permit fees.
- **BNSF Permit** – Contractor shall obtain BNSF Permit to Enter, if needed. The City is responsible for all permit fees. If a permit and insurance are warranted, contractor shall provide a cost breakdown.

G. Insurance Requirements

The proposer must obtain and maintain the required insurance. Proposer should review **Attachment C**, Instructions to Proposers for information regarding insurance, indemnification, Disadvantaged Business Enterprises, prevailing wages, etc. Failure to comply with the Instructions to Proposers may be grounds for rejection.

H. Department of Industrial Relations

Please refer to **Attachment C**, Instructions to Proposers, for registration requirements with the Department of Industrial Relations.

5. INSTRUCTIONS TO PROPOSERS (PROPOSAL REQUIREMENTS)

A. Introduction

Briefly introduce the proposal, including a statement of the Contractor's approach to providing on-call guardrail replacement services for the City of Stockton.

B. Statement of Qualifications

Describe your company's and staff experience in the field of guardrail repair services. Provide a minimum of three (3) agencies that you currently have on-call contracts with. Include references with contact names and phone numbers in each of these agencies. Provide a copy of your contractor's license in your proposal.

A 'Class A – General Engineering' Contractor's license is required (provide a copy). Contractor must have 10 years of experience. Provide three (3) previous customer references to validate this minimum qualification.

C. Estimated Quantities/Service Levels

The quantities/service levels specified herein are based on service calls for three or less guardrails. Any variations from these estimated quantities/service levels shall not entitle the bidder to an adjustment in unit pricing or rates.

D. Vendor's Books and Records

Vendor shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, other records of documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, for the date of final payment to Vendor pursuant to this contract. Vendor shall maintain all documents and records which demonstrate performance under this contract for a minimum of three (3) years, or for any period longer required by law, from the date of termination or completion of this contract. Any records or documents required to be maintained pursuant to this contract shall be made available for inspection or audit, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection. Access to such records and documents shall be granted to any part authorized by Vendor, Vendor's representatives, or Vendor's successor-in-interest.

E. Schedule of Goods and/or Services; Time of Performance

Vendor shall supply those goods and/or services which are specified herein, in accordance with the schedule and during the term which are specified herein. Time is of the essence in this contract. The Contractor shall respond to City calls/emails within ten (10) days from the date a service call has been requested by the City of Stockton. Time to respond shall start when the City calls/emails and reports the problem into the Contractor's designated phone number. The Contractor shall provide a call-back to the City designee within thirty (30) minutes of the initial call if unanswered by the Contractor.

F. Indemnity

To the fullest extent permitted by law, Vendor agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability, including without limitation claims for injuries or death to persons or damage to or destruction of property, caused by or resulting from the acts or omissions of Vendor, its officers, agents, employees or

subcontractors, in the performance of this purchase order, or the beach by Vendor of any of its obligations under this purchase order.

G. Compensation; Schedule of Payment

The compensation to be paid and the method of payment to Vendor of goods and services shall be set forth herein. Unless otherwise provided herein, payment shall not be due until thirty (30) calendar days after the later to occur of the date performance under this contract is completed to the satisfaction of City and the date City receives an acceptable invoice. No payment shall represent a waiver of City's right to inspect for defects. Unless otherwise provided herein, Vendor shall be responsible for all costs and expenses incident to the performance of this contract, including without limitation all costs of equipment provided by the Vendor, all fees, fines, licenses, bonds or taxes required of or imposed against Vendor, and all other Vendor's costs of doing business.

H. Pricing

Pricing shall be fixed for the initial 3-years term of the contract. Contractors shall include the Cost Proposal Form (**Attachment D**) with their proposal in a separate sealed envelope.

I. Price Adjustment

In the event the City elects to exercise its option for annual renewals. The unit price shall remain the same for the first three (3) years of the service. If the contract is extended for a fourth and fifth year, the unit price shall be increased by 2.5% annually.

J. Proposal Scoring Criteria

Proposals will be selected using a "best value" methodology based on the following categories. Refer to **Attachment E** for the Evaluation Scoring Sheet.

- A. Price (20 Points).** Points will be weighed considering the unit prices noted in the proposal for each of the bid items listed.
- B. Experience (20 Points).** Experience in providing a superior level of service on like-sized public and/or private projects.
- C. Quality of Work (20 Points).** Assessments of work quality, performance, and working relationship by current and recent clients that indicate high levels of satisfaction and effectiveness. Please provide references of current and past clients that your firm has provided on-call services to.
- D. Qualifications of Staff (20 points).** Qualifications of proposed staff to be assigned to the project. Please provide resumes, certifications, and licenses of qualified staff.
- E. Communications Capabilities / Record Keeping (10 points).** Well organized communication systems and reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City.

- F. Invoice Sample (5 points).** Effectiveness and clarity of sample invoice utilized by the contractor. Ability to customize invoices at City's request.
- G. Local Business Preference (5 points).** Local preference in accordance with Stockton Municipal Code Section 3.68.090.

6. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal:

- Attachment A – Scope of Services**
- Attachment B – Installation Details and Specifications**
- Attachment C – Instruction to Proposers**
- Attachment D – Cost Proposal Form**
- Attachment E – Evaluation Scoring Sheet**

EXHIBIT 2
EXHIBIT B

ITEM #	EST. QTY.	UoM	DESCRIPTION	UNIT \$	TOTAL \$
1	1	HR	Traffic Control System	\$450.00	\$450.00
2	1	Site	Mobilization	\$3,000.00	\$3,000.00
3	1	Site	Water Pollution Control		
4	1	Site	Clearing and Grubbing	\$2,500.00	\$2,500.00
5	1	LF	Deliver k-rail to City Corp Yard	\$50.00	\$50.00
6	1	SY	Replace HMA Patch (3")	\$2,500.00	\$2,500.00
7	1	EA	Install Guardrail Delineator	\$30.00	\$30.00
8	1	EA	Install Thrie Beam Delineation	\$30.00	\$30.00
9	1	EA	Install Object Marker Type P	\$150.00	\$150.00
10	1	LF	Remove & Replace Single MGS WP	\$100.00	\$100.00
11	1	LF	Remove & Replace Single MGS SP	\$100.00	\$100.00
12	1	LF	Remove & Replace Single MGS SP	\$100.00	\$100.00
13	1	LF	Remove & Replace Double MGS WP	\$100.00	\$100.00
14	1	LF	Remove & Replace Double MGS SP	\$100.00	\$100.00
15	1	LF	Remove & Replace Double MGS SP	\$100.00	\$100.00
16	1	LF	Remove & Replace Single TBB WP	\$120.00	\$120.00
17	1	LF	Remove & Replace Single TBB SP	\$120.00	\$120.00
18	1	LF	Remove & Replace Single TBB SP	\$120.00	\$120.00
19	1	LF	Remove & Replace Double TBB WP	\$120.00	\$120.00
20	1	LF	Remove & Replace Double TBB SP	\$120.00	\$120.00
21	1	LF	Remove & Replace Double TBB SP	\$120.00	\$120.00
22	1	LF	Remove & Install Concrete Barrier Type 60M	\$1,250.00	\$1,250.00
23	1	EA	Remove & Install WB-31 MGS Transition	\$8,000.00	\$8,000.00
24	1	EA	Remove & Install SFT-M	\$2,000.00	\$2,000.00
25	1	EA	Remove & Install RTA	\$2,000.00	\$2,000.00
26	1	EA	Remove & Install EAA Type CA	\$5,000.00	\$5,000.00
27	1	EA	Remove & Install TS FLEAT 350	\$3,000.00	\$3,000.00
28	1	EA	Remove & Install TS MFLEAT	\$3,000.00	\$3,000.00
29	1	EA	Remove & Install TS SKT	\$3,000.00	\$3,000.00
30	1	EA	Remove & Install TS MSKT	\$3,000.00	\$3,000.00
31	1	EA	Remove & Install TS MAX-Tension Tangent TL-2	\$8,000.00	\$8,000.00
32	1	EA	Remove & Install TS MAX-Tension Tangent TL-3	\$800.00	\$800.00
33	1	EA	Remove & Install Soft Stop 8" Block	\$6,000.00	\$6,000.00
34	1	EA	Remove & Install Soft Stop 12" Block	\$6,000.00	\$6,000.00
35	1	EA	Install EC Type A	\$250.00	\$250.00
36	1	EA	Install EC Type B	\$250.00	\$250.00
37	1	EA	Install EC Type TC (TBB)	\$250.00	\$250.00
38	1	EA	Install EC Type TA (TBB)	\$250.00	\$250.00
39	1	EA	Repair Crash Cushion San Barrel	\$1,500.00	\$1,500.00
40	1	HR	Repair Crash Cushion, QuadGuard QS24 - Labor	\$1,500.00	\$1,500.00
41	1	HR	Repair Crash Cushion, TAU II - Labor	\$1,500.00	\$1,500.00
42	1	HR	Repair Crash Cushion, Other Types - Labor	\$1,500.00	\$1,500.00
43	1	EA	QG Backup	\$6,530.00	\$6,530.00
44	1	EA	QG Fender Panel	\$1,500.00	\$1,500.00
45	1	EA	QG Nose Cover	\$2,000.00	\$2,000.00
46	1	EA	QG Type I Cartridge	\$1,750.00	\$1,750.00

EXHIBIT 2
EXHIBIT B

47	1	EA	QG Type II Cartridge	\$1,800.00	\$1,800.00
48	1	EA	QG Diaphragm	\$2,160.00	\$2,160.00
49	1	EA	QG Monorail	\$6,850.00	\$6,850.00
50	1	EA	QG Adhesive Kit	\$250.00	\$250.00
51	1	EA	TAU Flush Mount Backup	\$3,590.00	\$3,590.00
52	1	EA	TAU Wide Flange Backup	\$31,260.00	\$31,260.00
53	1	EA	TAU Compact Backup	\$9,850.00	\$9,850.00
54	1	EA	TAU Compact Backup Asphalt	\$11,484.00	\$11,484.00
55	1	EA	TAU PCB Backstop	\$2,060.00	\$2,060.00
56	1	EA	TAU PCB Backstop w/Cable Anchor	\$2,775.00	\$2,775.00
57	1	EA	TAU Nose Piece - Wide	\$2,100.00	\$2,100.00
58	1	EA	TAU Nose Piece - Parallel	\$2,000.00	\$2,000.00
59	1	EA	TAU Type A Cartridge	\$1,300.00	\$1,300.00
60	1	EA	TAU Type B Cartridge	\$1,300.00	\$1,300.00
61	1	EA	TAU Wide Cable	\$5,740.00	\$5,740.00
62	1	EA	TAU Parallel Cable	\$5,185.00	\$5,185.00
63	1	EA	TAU Front Cable Anchor - Reverse	\$1,675.00	\$1,675.00
64	1	EA	TAU Front Cable Anchor - Universal	\$1,385.00	\$1,385.00
65	1	EA	TAU Front Cable Anchor - Compact	\$2,965.00	\$2,965.00
66	1	EA	TAU Rear Cable Anchor - Independent	\$2,060.00	\$2,060.00
67	1	EA	TAU Rear Cable Anchor - Backstop Mount	\$1,725.00	\$1,725.00
68	1	EA	TAU Front Cable Anchor - Asphalt	\$1,500.00	\$1,500.00
69	1	EA	TAU Cable Key Front	\$100.00	\$100.00
70	1	EA	TAU Cable Key Front	\$100.00	\$100.00
71	1	EA	TAU Sliding Panel	\$815.00	\$815.00
72	1	EA	TAU End Panel	\$530.00	\$530.00
73	1	EA	TAU Angled End Panel	\$1,435.00	\$1,435.00
74	1	EA	TAU XL Bulkhead	\$5,165.00	\$5,165.00
75	1	EA	TAU XXL Bulkhead	\$6,785.00	\$6,785.00
76	1	EA	TAU XXXL Bulkhead	\$7,290.00	\$7,290.00
77	1	EA	TAU Middle Support	\$3,635.00	\$3,635.00
78	1	EA	TAU Front Support	\$2,730.00	\$2,730.00
79	1	EA	TAU Wing Assembly	\$1,435.00	\$1,435.00
80	1	EA	TAU Transition Wing Assembly	\$1,435.00	\$1,435.00
81	1	EA	TAU 36" Adaptor Assembly	\$1,245.00	\$1,245.00
82	1	EA	TAU Leg - Wide	\$310.00	\$310.00
83	1	EA	TAU Bumper Assembly - Wide	\$400.00	\$400.00
84	1	EA	TAU Pipe Panel Mount	\$580.00	\$580.00
85	1	EA	TAU Backstop Blockout - Wide	\$1,500.00	\$1,500.00
86	1	EA	TAU Front Collision Plate - Wide	\$120.00	\$120.00
87	1	EA	TAU Wing Brace - Wide	\$1,435.00	\$1,435.00
88	1	EA	TAU Spacer - Wing Brace - Wide	\$100.00	\$100.00
89	1	EA	TAU Level Spacer	\$50.00	\$50.00
90	1	EA	TAU EAC Locator Kit	\$1,055.00	\$1,055.00
91	1	EA	TAU Slider Assembly Kit	\$910.00	\$910.00
92	1	EA	TAU Leg Adaptor - Wide	\$80.00	\$80.00
93	1	EA	TAU Backing Plate - Wide	\$25.00	\$25.00

EXHIBIT 2
EXHIBIT B

94	1	EA	TAU Lateral Support Mount - Wide	\$310.00	\$310.00
95	1	EA	TAU Lateral Support Cable Assembly Kit	\$6,695.00	\$6,695.00
96	1	EA	TAU Bulkhead Mount - Wide	\$7,655.00	\$7,655.00
97	1	EA	TAU Cable GuideMounting Plate - Wide	\$155.00	\$155.00
98	1	EA	TAU Cable Guide Assembly Kit	\$1,340.00	\$1,340.00
99	1	Site	Material Markup 15%	\$0.00	\$0.00
100	1	LS	Permit Fees	\$0.00	\$0.00

Exhibit C:
Insurance Requirements
(On-Call Guardrail Repair, City Project No. OM-24-118)

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, his 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 **\$1,000,000** per accident for bodily injury and property damage.
- 3. Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

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 the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or

deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

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, CG 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 primary and non-contributory** 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. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.
- 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 (Professional & Pollution only)

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 cancelled 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.

Umbrella or Excess Policies

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

Acceptability of Insurers

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

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all 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.

Duration of Coverage

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

Special Risks or Circumstances

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

Certificate Holder Address

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

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

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

EXHIBIT 2
EXHIBIT D

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

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

I. PURPOSE

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

II. POLICY

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

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

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

PER-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

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

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

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

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

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

III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

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

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

EXHIBIT 2
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DISCRIMINATION AND HARASSMENT POLICY	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
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otherwise adversely affecting an employee's or non-employee's employment opportunities.

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

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

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

EXHIBIT 2
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DISCRIMINATION AND HARASSMENT POLICY	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
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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.

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

EXHIBIT 2
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- i. Retaliation for making harassment reports or threatening to report harassment.
- D. Affordable Care Act (ACA) Anti-Retaliation
Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:
1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
 2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
 3. Testifies in a proceeding concerning such violation;
 4. Assists or participates in a proceeding concerning a violation; or
 5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

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

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

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

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

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

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

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

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

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

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

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

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

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

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

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

B. Investigative Guidelines

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

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

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supervisors, about the harassment.

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

VI. RESPONDING TO THE COMPLAINT

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

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

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

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

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

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

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

VII. DISCIPLINE

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

VIII. ALTERNATIVE REMEDIES

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

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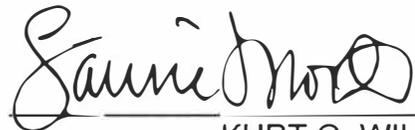
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

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

APPROVED:



KURT O. WILSON
CITY MANAGER

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