



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2019-00999

July 23, 2019

Consent Item 11

Title: Agreement for Revenue Audit and Recovery Services

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to execute a five-year professional services agreement with MuniServices/AvenuInsights & Analytics to provide audit, recovery, and forecast services in an amount not-to-exceed \$1.625 million for the length of the contract, provided that sufficient funds are available in the budget adopted for the applicable fiscal years.

Contact: Julie Coffeen, Interim Revenue Manager, (916) 808-1259, Department of Finance

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-RFP Evaluation and Rating Summary
- 3-Contract

Description/Analysis

Issue Detail: The City of Sacramento has utilized MuniServices/AvenueInsights & Analytics (Muni) to provide revenue audit and recovery services since 1986. Muni has recovered over \$57 million on behalf of the City. The current contract for services with Muni expires on August 31, 2019.

The City recently conducted a Request for Proposal (RFP) P19061211002 for revenue audit and recovery services. The City received two bids from contractors to provide these services. A selection committee reviewed the bids and evaluated them based on the firms' qualifications, experience, proposed scope of service, and the cost of those services. Muni was selected as the most qualified and experienced to perform the services requested. The evaluation and rating summary is attached.

Policy Considerations: The recommendations in this report are consistent with the provisions of City Code Chapter 3.64 regarding contracts for professional services.

Economic Impacts: None.

Environmental Considerations: This report concerns administrative activities and governmental fiscal activities that do not constitute a "project" as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines Section 15060(c)(3)).

Sustainability: None.

Commission/Committee Action: None.

Rationale for Recommendation: In April 2019, the City's Procurement Services Division, in accordance with City Code chapter 3.64, issued a Request for Proposal (P19061211002) for Revenue Audit and Recovery Services. Based on a panel review of the proposals staff recommends awarding the contract to Muni.

Financial Considerations: A five-year professional services agreement for a total not-to-exceed amount of \$1.625 million has been negotiated with Muni. The current year costs include \$50,000 in hard costs and up to \$250,000 in contingency fees (the contingency fees are dependent on the number of audits performed during the year). Sufficient funding for the first year of the five-year term is available in the Finance Department's FY2019/20 operating budget. Subsequent work will be subject to funding availability in the adopted fiscal year's budget.

The following list below breaks down the contract fees:

Service	Fee
Sales, Use and Transaction & Use Tax Audit	10% of identified misallocations for four quarters
Sales Tax Analysis and Reporting	Year 1 - \$10,000 Year 2 - \$12,500 Year 3 - \$15,000
Business Operation Tax Discovery and Audit	15% one-time contingency fee on all retroactive recoveries
Cannabis Tax Audit	\$145 per hour
Utility User Tax Audit	\$40,000 annual fixed fee and 20% contingency for city-specific audits
Transient Occupancy Tax Audit	\$1,500 per lodging provider audit

Local Business Enterprise (LBE): MuniServices/AvenueInsight & Analytics is a LBE.

City of Sacramento
RFP - Revenue Audit and Recovery Services
Proposal Evaluation and Rating Summary

Criteria	Evaluator 1		Evaluator 2		Evaluator 3		Evaluator 4		Average Score		
	HdL	Muni	HdL	Muni	HdL	Muni	HdL	Muni	HdL	Muni	
Qualifications 16 points max.	15	15	16	16	16	16	13	14	15	15.25	
Consultant Experience 16 points max.	15	15	16	16	16	16	14	15	15.25	15.5	
Proposed Scope of Services 16 points max.	14	13	16	16	16	16	13	14	14.75	14.75	
Cost of Services 52 points max.	STA - 12 pts	9	11	8	12	8	12	9	10	8.5	11.25
	STR - 8 pts	7	6	8	7	8	6	6	7	7.25	6.5
	BOT - 8 pts	5	7	6	8	8	8	6	7	6.25	7.5
	CA - 8 pts	7	6	7	8	8	8	7	5	7.25	6.75
	UUT - 8 pts	7	6	8	6	8	6	6	6	7.25	6
	TOT - 8 pts	6	7	8	7	8	7	6	5	7	6.5
	TOTAL	41	43	45	48	48	47	40	40	43.5	44.5
LBE Certified 5 pref. points	1	5	0	5	0	5	0	5	0.25	5	
TOTAL POINTS	127	134	138	149	144	147	120	128	132.25	139.5	
Other Considerations/Notes:											

CONTRACT #: PRC000378
CONTRACT NAME: Revenue Audit and Recovery Services
CONTRACT PROJECT #: 06001211-1001-433061
DEPARTMENT: Finance Department
DIVISION: Revenue Division

PROFESSIONAL SERVICES CONTRACT

This Contract is made and entered into at Sacramento, California, between the CITY OF SACRAMENTO, a charter city and municipal corporation ("City"), and

MUNISERVICES, LLC

5860 Trinity Parkway, Suite 120

Centreville, VA 20120

("Contractor"), as of date it is fully executed ("Effective Date").

The City and Contractor agree as follows:

1 CONTRACT DOCUMENTS

All exhibits and documents attached or referred to in this Contract are incorporated as if set forth fully herein, including the Scope of Services Exhibit, Payment Exhibit, Insurance Exhibit, General Conditions Exhibit, and Labor Compliance Exhibit.

If there is a conflict between the terms and conditions of any document prepared or provided by the Contractor or made a part of this Contract and the terms or conditions of the other Contract Documents, the terms and conditions of the other Contract Documents control.

2 SERVICES

Subject to the terms and conditions set forth in this Contract, Contractor shall provide to City the Services described in the attached Scope of Services Exhibit ("Services"). Contractor shall provide the Services at the time, place, and in the manner specified in the Scope of Services Exhibit.

Contractor will not be compensated for Services outside the Scope of Services Exhibit ("Additional Services") unless before providing Additional Services: (a) Contractor notifies City and City agrees that the Additional Services are outside the scope of the Scope of Services Exhibit; (b) Contractor estimates the additional compensation required for these Additional Services; and (c) City, after notice, approves in writing a

Contract Amendment specifying the Additional Services and the amount of compensation for the Additional Services.

City will have no obligations whatsoever under this Contract or any Contract Amendment, unless and until this Contract or any Contract Amendment is approved by the City as required by City Code. As used in this Contract, the term "Services" includes both Services and Additional Services as applicable.

3 PAYMENT

City shall pay Contractor at the times and in the manner set forth in the attached Payment Exhibit. Contractor shall submit all invoices to City in the manner specified in the Payment Exhibit.

4 FACILITIES AND EQUIPMENT

Except as set forth below, Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for Contractor to perform this Contract. City shall furnish to Contractor only the facilities and equipment listed below, if any.

5 INSURANCE

Contractor shall, at its sole cost and expense, maintain the insurance coverage described in the attached Insurance Exhibit.

6 GENERAL CONDITIONS

Contractor shall comply with the terms and conditions set forth in the attached General Conditions Exhibit.

7 NON-DISCRIMINATION IN EMPLOYEE BENEFITS

This Contract may be subject to Sacramento City Code chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements, entitled "Requirements of the Non-Discrimination in Employee Benefits Code (Equal Benefits Ordinance)", can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands the requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.54. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance.

Contractor's violation of Sacramento City Code chapter 3.54 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

8 CONSIDERING CRIMINAL CONVICTION INFORMATION IN THE EMPLOYMENT APPLICATION PROCESS

This Contract may be subject to Sacramento City Code chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements, entitled "Ban-The-Box Requirements", can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

The Ban-The-Box Requirements are applicable to certain contracts with the City in an amount of \$100,000 or more (either initial value or total value after amendment) or if the total value of all Contractor's contracts with the City is \$100,000 or more over a 12-month period.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.62. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.62 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.62.

Contractor's violation of Sacramento City Code chapter 3.62 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

9 LOCAL BUSINESS ENTERPRISE PROGRAM - LBE PARTICIPATION

The Local Business Enterprise Program Participation Requirements ("LBE Participation Requirements") are applicable to this Contract. A summary of the requirements, entitled "LBE Participation Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Contractor acknowledges and represents that Contractor has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.60. If requested by City, Contractor shall promptly provide any documents and information required by City to verify Contractor's compliance. Contractor shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.60 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.60.

Contractor's violation of Sacramento City Code chapter 3.60 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

10 AUTHORITY

The person signing this Contract for Contractor represents and warrants that he or she has read, understands, and agrees to all the Contract terms and is fully authorized to

sign this Contract on behalf of the Contractor and to bind Contractor to the performance of the Contract's obligations.

SCOPE OF SERVICES EXHIBIT

1 REPRESENTATIVES

The City Representative for this Contract is:

Julie Coffeen, Interim Revenue Manager
City of Sacramento
Department of Finance
915 I Street Room 1201, Sacramento, CA, 95814
916-808-1259
jcoffeen@cityofsacramento.org

The Contractor Representative for this Contract is:

Doug Jensen, Senior Vice President
Avenu Insights & Analytics/MuniServices
5860 Trinity Parkway, Suite 120, Centreville, VA 20120
559-288-8943
doug.jensen@avenuinsights.com

Unless otherwise provided in this Contract, all Contractor questions and correspondence pertaining to this Contract must be addressed to the City Representative. All City questions and correspondence must be referred to the Contractor Representative.

2 CONFLICT OF INTEREST REQUIREMENTS

The individual(s) who will provide Services or perform Work pursuant to this Contract are not considered "Consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code.

3 SCOPE OF CONTRACT

Contractor shall provide Services to City as set forth in Attachment 1 to this Scope of Services Exhibit.

4 TIME OF PERFORMANCE

The Services described in this Contract shall be provided during the period beginning on July 01, 2019 and ending on June 30, 2024. Contractor shall provide the Services in accordance with any schedule in Attachment 1 to this Scope of Services Exhibit. Contractor shall immediately notify the City if Contractor is unable to perform Services in compliance with this Contract.

PAYMENT EXHIBIT

1 CONTRACTOR'S COMPENSATION

The total of all fees paid to the Contractor shall not exceed the total sum of \$ 1,625,000.00. The payments specified in this Payment Exhibit shall be the only payments made to Contractor unless the City approves a Contract Amendment.

2 PRICING

Contractor shall be paid as set forth in the Scope of Services Exhibit or the Payment Exhibit and any applicable special provisions included in the request for bids or proposals ("Special Provisions"). If there is a conflict between the Scope of Services Exhibit or Payment Exhibit and the Special Provisions, the Scope of Services Exhibit or Payment Exhibit controls.

3 CONTRACTOR'S REIMBURSEABLE EXPENSES

"Reimbursable Expenses" are limited to actual expenditures of Contractor for expenses that are necessary for the proper satisfaction of the Contract and are only payable if specifically authorized in advance in writing by City.

4 PURCHASE ORDERS

Unless otherwise stated, a Purchase Order will be issued to the Contractor on behalf of the City. Purchase Orders will cite the quantity of Goods or Services requested, the purchase amount, and time of performance. If the time of performance of this Contract extends beyond the close of the City's fiscal year, another Purchase Order may be issued. No Purchase Order supersedes any provision of this Contract. Contractor shall not deliver Goods or provide Services until Contractor receives a Purchase Order or other written notification by the City.

5 PAYMENTS TO CONTRACTOR

Contractor is responsible for supplying all documentation necessary to verify invoices to the City's satisfaction.

A. Payment terms are NET 30 days, unless otherwise stated in this Contract.

B. Invoices must be submitted to either of the addresses specified below.

(1) Email. Submit email invoices and any attachments to:

apinvoices@cityofsacramento.org

(2) Postal Mail. If emailing is not an option, mail to:

A/P Processing Center
City of Sacramento
915 I Street, Floor 4
Sacramento, CA 95814-2608

C. All invoices submitted by Contractor must contain the following information:

- (1) Job/Project Name (if applicable)
- (2) City's current Purchase Order Number
- (3) Contractor's Invoice Number
- (4) Date of Invoice Issuance
- (5) Work Order Number (if applicable)
- (6) City representative identified on the Purchase Order
- (7) Contractor's remit address
- (8) Itemized description of the Services billed under Invoice
- (9) Itemized description of all authorized Reimbursable Expenses
- (10) Itemized description of all applicable taxes (sales, use, excise, etc.)
- (11) Amount of Invoice
- (12) Total Billed to Date under Contract (if applicable)

D. Items must be separated into Services and Reimbursable Expenses. All applicable sales, use, excise, or similar taxes, including federal excise tax, must be itemized separately on the invoice. Invoices that do not conform to the format outlined above will be returned to Contractor for correction. City is not responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described above.

E. Unless otherwise specified in this Contract, partial payments will not be made by the City and payment will not be due until the completion of Services. No payment precludes the City's right to inspect. Requests for payment status should be addressed to the City Representative for this Contract.

6 ADDITIONAL SERVICES

Additional Services shall be provided only when a Contract Amendment authorizing the Additional Services is approved in writing by the City in accordance with the City's contract amendment procedures. The City reserves the right to perform any Additional Services with its own staff or to retain other Contractors to perform the Additional Services.

7 BILLING DISPUTES

The burden of proof shall be on the Contractor to establish the accuracy of its invoices. Upon presentation and verification of the information provided by Contractor, the City will review all records and make a final determination and present its finding to Contractor.

8 ACCOUNTING RECORDS OF CONTRACTOR

During performance of this Contract and for a period of three years after completion of performance, Contractor shall maintain all accounting and financial records related to this Contract, in accordance with generally accepted accounting practices, including records of Contractor's costs for performance under this Contract and records of Contractor's Reimbursable Expenses. Contractor shall keep and make records available for inspection and audit by representatives of the City upon reasonable written notice.

9 SALES TAX REQUIREMENTS

The City is not exempt from paying sales tax. Sales tax must be shown on the invoice as a separate line item.

10 EXCISE TAX REQUIREMENTS

The City of Sacramento is exempt from the payment of Federal Excise Tax. An exemption certificate will be submitted to Contractor upon request. If Federal Excise Tax is applicable to the transaction, it must be so stated and excluded from the price.

11 TAX PAYMENTS

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 the payment upon request. Contractor hereby agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by City arising out of Contractor's breach of this section.

INSURANCE REQUIREMENTS EXHIBIT

1 INSURANCE REQUIREMENTS

During the entire term of this Contract, Contractor shall maintain the insurance coverage described in this Insurance Exhibit.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Contract. No additional compensation will be provided for Contractor's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

Contractor's liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by the Contractor in connection with this Contract.

2 GENERAL LIABILITY MINIMUM SCOPE AND LIMITS OF INSURANCE COVERAGE

Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of the Contractor and subcontractors, products and completed operations of Contractor and subcontractors, and premises owned, leased, or used by Contractor and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of Contractor and subcontractors; products and completed operations of Contractor and subcontractors; and premises owned, leased, or used by Contractor and subcontractors.

3 AUTOMOBILE LIABILITY MINIMUM SCOPE AND LIMITS OF INSURANCE COVERAGE

Automobile Liability Insurance is not required as Contractor has certified, by signing this Contract, that a motor vehicle will not be used in the delivery of Goods or performance of Services under this Contract. Any deliveries of Goods will be via common carrier.

If Contractor transport items under this Contract or this Contract is amended to require any employees of the Contractor to perform Services under the Contract, Contractor will maintain and provide evidence of Auto Liability insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

4 EXCESS INSURANCE

The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will apply on a primary basis for the benefit of the City, and any insurance or self-insurance maintained by City, its officials, employees, or volunteers will be in excess of Contractor's umbrella or excess coverage and will not contribute to it.

5 WORKERS' COMPENSATION MINIMUM SCOPE AND LIMITS OF INSURANCE COVERAGE

Workers' Compensation Insurance is required with statutory limits and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). A waiver of subrogation in favor of the City is not required as no work or services will be performed on or at City facilities or City property.

6 PROFESSIONAL LIABILITY MINIMUM SCOPE AND LIMITS OF INSURANCE COVERAGE

Professional Liability Insurance providing coverage on a claims-made basis for errors, omissions, or malpractice with limits of not less than one million dollars (\$1,000,000) is required. Such coverage must be continued for at least 1 years following the completion of all Services under this Contract. The retroactive date must be prior to the date this Contract is approved or any Services are performed.

7 OTHER INSURANCE PROVISIONS

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

- a. Contractor's insurance coverage, including excess insurance, shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers will be in excess of Contractor's insurance and will not contribute with it.
- b. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officials, employees or volunteers.
- c. Coverage shall state that Contractor's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The City will be provided with 30 days written notice of cancellation or material change in the policy language or terms.

8 ACCEPTABILITY OF INSURANCE

Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Insurance Exhibit must be declared to and approved by the City in writing before execution of this Contract.

9 VERIFICATION OF COVERAGE

A. Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the City Representative on demand.

B. Contractor shall send all insurance certificates and endorsements, including policy renewals, during the term of this Contract directly to:

City of Sacramento
c/o Exigis LLC
PO Box 4668 ECM- #35050
New York, NY 10168-4668

C. Certificate Holder must be listed as:

City of Sacramento
c/o Exigis LLC
PO Box 4668 ECM- #35050
New York, NY 10168-4668

D. The City may withdraw its offer of Contract or cancel this Contract if the certificates of insurance and endorsements required have not been provided before execution of this Contract. The City may withhold payments to Contractor and/or cancel the Contract if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

10 SUBCONTRACTOR INSURANCE COVERAGE

Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Insurance Exhibit.

GENERAL CONDITIONS EXHIBIT

1 INDEPENDENT CONTRACTOR

A. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel will be entitled to any benefits payable to City employees. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Contract, and Contractor will be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance under this Contract.

B. It is further understood and agreed by the parties that Contractor, in the performance of its obligations, is subject to the City's control and direction as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by Contractor for accomplishing the required results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Contract, this use will be at the Contractor's sole discretion based on the Contractor's determination that the use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Contract. As used in this Contract, "sole discretion" or "sole judgment" means that the party authorized to exercise its discretion or judgment may do so based on an unfettered assessment of its own interests, without considering how its decision affects the other party, and unconstrained by the implied covenant of good faith and fair dealing.

C. If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under the direction, supervision, and control of Contractor. Except as otherwise provided in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor will issue W-2 or 1099 forms for income and employment tax purposes for all Contractor's assigned personnel and subcontractors.

D. The provisions of this section survive any expiration or termination of this Contract. Nothing in this Contract creates an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by any additional persons or companies so long as Contractor does not violate the provisions of the Conflicts of Interest section.

2 LICENSES AND PERMITS

Contractor represents and warrants that the Contractor has all licenses, permits, City Business Operations Tax Certificates, qualifications, and approvals of whatsoever nature that are legally required for the Contractor to practice its profession or fulfill the terms of this Contract and that the Contractor must, at its sole cost and expense, maintain licenses, permits, certificates, qualifications, and approvals at all times during the term of this Contract. Without limiting the generality of the foregoing, if the Contractor is an out-of-state corporation, the Contractor represents and warrants that it possesses a valid certificate to transact business in the State of California issued by the California Secretary of State in accordance with Section 2105 of the California Corporations Code.

3 CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel have no authority, express or implied, to act on the City's behalf in any capacity whatsoever as an agent. Contractor and Contractor's personnel have no authority, express or implied, to bind City to any obligations whatsoever.

4 CONFLICTS OF INTEREST

Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the City's interests or that would in any way hinder Contractor's performance under this Contract. Contractor further covenants that in the performance of this Contract, no person having any such interest will be employed by it as an officer, employee, agent or subcontractor, without the City's written consent.

Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the City's interests during the performance of this Contract. If Contractor is or employs a former officer or employee of the City, Contractor and any former City officer or employee shall comply with the provisions of Sacramento City Code section 2.16.090 pertaining to appearances before the City Council or any City department, board, commission, or committee.

5 NOTIFICATION OF MATERIAL CHANGES IN BUSINESS

Contractor agrees that if it experiences any material changes in its business, including a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, name change, or loss of key personnel, it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition that may jeopardize the scheduled delivery or fulfillment of Contractor's obligations to the City under this Contract.

6 CONFIDENTIALITY OF CITY INFORMATION

During performance of this Contract, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City.

Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the City's prior written consent.

In addition, Contractor must comply with all City policies governing the use of the City network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions #30. Any violation by Contractor of this section is a material violation of this Contract and justifies legal and equitable relief.

7 CONTRACTOR INFORMATION

A. City will have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor under this Contract. In this Contract, the term "information" means and includes: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.

B. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor under this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten days after City is served with any such claim, action, lawsuit or other proceeding. However, City's failure to provide notice within the ten day period does not relieve Contractor of its obligations hereunder, which survive any termination or expiration of this Contract.

C. All proprietary and other information received from Contractor by City, whether received in connection with Contractor's proposal to City or in connection with performance by Contractor, will be disclosed upon receipt of a request for disclosure, in accordance with the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. The Contractor will then have five days from the date it receives notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by City in any legal action to compel the disclosure of the information under the California Public Records Act. The Contractor shall have sole responsibility for defense of the actual "trade secret" designation of such information. Alternatively, the Contractor may petition the court for a protective order to prevent the disclosure of the information.

D. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and enter into an agreement with City or seek a protective order, in accordance with the provisions of subsection C, above, constitutes a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and the information will be disclosed by City in accordance with the Public Records Act.

8 TIME

Time is of the essence in the performance of this Contract. Contractor shall devote the necessary time and effort to its performance under this Contract to satisfactorily and timely perform its obligations under this Contract. Neither party will be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

9 STANDARD OF PERFORMANCE

Contractor shall perform in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in California and in compliance with all standards set forth in this Contract. All products that Contractor delivers to City under this Contract must be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession.

Contractor shall assign only competent personnel to perform on its behalf under this Contract. Contractor must notify the City in writing of any changes in Contractor's staff assigned to perform under this Contract, before any performance by the new staff member. If the City, in its sole discretion, determines that any person assigned by the Contractor to perform under this Contract is not performing in accordance with the standards required herein, City shall provide notice to Contractor. Contractor shall immediately remove the assigned person upon receipt of the notice.

10 EMERGENCY / DECLARED DISASTER REQUIREMENTS

If an emergency is declared by the City Manager, or if any portion of the City is declared a disaster area by the county, state or federal government, this Contract may be subjected to increased usage. The Contractor shall serve the City during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency / non-disaster conditions. The pricing set forth in this Contract will apply, without mark-up, regardless of the circumstances. If the Contractor is unable to fulfill the terms of the Contract because of a disruption in its chain of supply or service, then the Contractor shall provide proof of the disruption. Acceptable forms of proof will include a letter or notice from the Contractor's source stating the reason for the disruption.

11 TERM; SUSPENSION; TERMINATION

A. This Contract is effective on the Effective date and continues in effect until both parties have fully performed their respective obligations under this Contract, unless sooner terminated as provided herein.

B. The City shall have the right at any time to suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. Upon receipt of such notice, Contractor shall immediately suspend its activities under this Contract, as specified in the notice.

C. The City shall have the right to terminate this Contract at any time by giving a written notice of termination to Contractor. Upon receipt of such notice, Contractor shall immediately cease performance under this Contract as specified in the notice. If the City terminates this Contract:

- (1) Contractor shall, not later than five days after receipt of the notice, deliver all information prepared under this Contract to the City.
- (2) The City shall pay Contractor the reasonable value of Goods or Services provided by Contractor before termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the Contract not been terminated or had Contractor completed performance required by this Contract. Contractor shall furnish to the City any financial information requested by the City to determine the reasonable value of the Goods or Services provided by Contractor. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

12 DEFAULT BY CONTRACTOR

In case of default by the Contractor, the City reserves the right to procure the Goods or Services from other sources and deduct from any monies due, or that may thereafter become due to the Contractor, the difference between the price named in this Contract and the actual cost to the City to procure from an alternate source. Prices paid by the City will be considered the prevailing market price at the time such purchase is made.

13 GUARANTEE AND WARRANTY

Contractor guarantees and warrants that all Services will conform to applicable specifications, drawings, descriptions, and samples, and will be merchantable, of good workmanship and materials, and free from defect. Unless manufactured in accordance with detailed design specifications furnished by City, Contractor assumes design responsibility and warrants the articles to be free from design defect and suitable for the purposes intended by City. If it is determined by the City that the Services do not meet the minimum requirements of this Contract, the Contractor shall correct the same at Contractor's sole expense.

A. The Contractor agrees that the Services furnished under this Contract will be covered by the industry standard or better warranty.

B. Contractor further warrants that the Services furnished under this Contract will be covered by the most favorable commercial warranties the Contractor gives to any customer for the Services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City at law or equity, or by any other clause of this Contract.

C. Any additional warranties provided by law, including the warranty of merchantability and warranty of fitness for a particular purpose will remain in full force and effect and inure to the City's benefit. City reserves all rights and remedies provided by law for breach of any applicable warranty related to the Services.

D. City's inspections, approval, acceptance, or payment for all or part of any Services will in no way affect City's warranty rights.

14 INDEMNITY

A. Indemnity: Contractor shall defend, hold harmless, and indemnify City, its officers, and employees, and each and every one of them, from and against all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs, and expenses of every type and description, whether arising on or off the site of the work or services performed under this Contract, including any fees and costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including Liabilities for personal injury or death, damage to personal, real, or intellectual property, damage to the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Contract by Contractor, any subcontractor (including lower-tier subcontractors) or agent of Contractor, their respective officers and employees, and anyone else for whose acts of omissions any of them may be liable, whether or not the Liabilities (i) are caused in part by a party indemnified hereunder, or (ii) are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense, to the extent arising from the active negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the supervision and control of Contractor or any subcontractor (including lower-tier subcontractors) or agent of Contractor.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by City of any of the insurance policies or coverages described in this Contract does not affect or limit any of City's rights under this section, nor do the limits of any insurance limit the liability of Contractor hereunder. This section will not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of the Contractor Information section above. The provisions of this section survive any expiration or termination of this Contract.

15 FUNDING AVAILABILITY

A. This Contract is subject to the budget and fiscal provisions of the Charter and the Sacramento City Code.

B. The City's payment obligation under this Contract will not exceed the amount of funds appropriated and approved for this Contract by the Sacramento City Council or its designee.

C. This section governs over any other contrary provision of the Contract.

16 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, Contractor, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance with Law and Regulations: Contractor shall comply with all state, local, and federal anti-discrimination laws and regulations, including the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375, 12086, and 13672, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), referred to collectively as the "Regulations".

B. Nondiscrimination: Contractor, with regards to the work performed by it after award and before completion of the work under this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap, or sexual orientation.

D. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with the Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Contract, the City may impose any sanctions it determines to be appropriate including:

(1) Withholding of payments to Contractor under this Contract until Contractor complies;

(2) Cancellation, termination, or suspension of this Contract, in whole or in part.

F. Incorporation of Provisions: Contractor shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions

issued pursuant thereto. The City may direct Contractor to take specific actions to enforce these provisions, including sanctions for noncompliance; provided, however, if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, Contractor may request that the City join such litigation to protect the City's interests.

17 ENTIRE AGREEMENT

This Contract, including all Exhibits and documents referenced herein, contains the entire Contract between the parties and supersedes whatever oral or written understanding they may have had before the execution of this Contract. No alteration of the terms of this Contract will be valid unless approved in writing by the Contractor and the City in accordance with applicable provisions of the Sacramento City Code.

18 MODIFICATION OF CONTRACT

The City may order changes in the Services required and the Contractor shall comply with such orders, except that if the changes increase or decrease the price or costs fixed in the Contract, the order will not be valid unless the increase or decrease in cost or change in the schedule is agreed upon in writing by the parties, consistent with the Sacramento City Code.

19 SEVERABILITY

If a court with jurisdiction rules that any portion of this Contract or its application to any person or circumstance is invalid or unenforceable, the remainder of this Contract will not be affected thereby and will remain valid and enforceable as written, to the greatest extent permitted by law.

20 WAIVER

Neither the City acceptance of, or payment for, any Service, nor any waiver by either party of any default, breach, or condition precedent, will be construed as a waiver of any provision of this Contract, nor as a waiver of any other default, breach, or condition precedent or any other right hereunder. No waiver is effective unless it is in writing and signed by the waiving party.

21 GOVERNING LAW

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of California, except that the rule of interpretation in California Civil Code section 1654 will not apply. Venue of any litigation arising out of this Contract will lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any litigation in such courts, and consent to service of process issued by such courts.

22 ASSIGNMENT PROHIBITED

The expertise and experience of Contractor are material considerations for this Contract. City has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on Contractor under this Contract. In recognition of this interest, Contractor shall not assign any right or obligation under this

Contract without the written consent of the City. Any attempted or purported assignment without City's written consent is void and of no effect.

23 BINDING EFFECT / ASSIGNMENT

This Contract is binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of the Assignment Prohibited section.

24 COMPLIANCE WITH LAWS

The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished under the Contract, including the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.