

## **INSTRUCTIONS TO PROPOSERS**

### **Locally Funded Contracts**

#### **1. INSTRUCTIONS**

The proposer shall carefully examine the instructions contained herein and satisfy himself/herself as to the conditions with which he/she must comply prior and with the conditions affecting the eventual award of a Professional Services Contract. Proposers shall state in their proposal that they have read these instructions and will comply.

#### **2. PROPOSAL SUBMISSION**

Submittals shall be placed in a clearly marked envelope with the Project Name and Number marked clearly on the envelope. The suggested fee for the service shall be submitted in a separate, sealed envelope. Proposals shall be delivered or mailed to:

City of Stockton  
Public Works Department  
22 E. Weber Avenue, Room 301  
Stockton, CA 95202  
Attn.: "Name of Project Manager"

#### **3. CONTRACTOR REGISTRATION REQUIREMENTS**

A Contractor or subcontractor shall not be qualified to propose on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of this section for an unregistered Contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Only vendors/contractors that are subject to the public works statutes would be required to register. A&E firms that are not doing or subcontracting out tasks subject to public work requiring prevailing wages are not subject to registration and public works laws. Design work is not subject to prevailing wages and, therefore, not considered public work, and the firm does not have to register. For example, A&E tasks that are subject to public works laws would be surveying, soil testing, material testing, and building/construction inspection, as there are prevailing wage determination for these works.

No contractor or subcontractor may be listed on a proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

Department of Industrial Relations- Contractor Registration information and web link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>

In compliance with Senate Bill 854 and the California Labor Code, all proposers shall include with their proposal proof of registration from the Department of Industrial Relations (DIR) that includes the contractor's Legal Name, Registration Number, License Type/Number, Registration Date and Expiration Date, for every contractor and subcontractor, regardless of tier. For subcontractor proof of registration that could not be included with the bid, the contractor will be allowed to submit subcontractor registration proof no later than four business days after bid opening.

Proposer shall complete and include with their proposal a signed Department of Industrial Relations Labor Compliance Self-Certification Form (Exhibit A).

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors must submit their certified payroll records directly to the Division of Labor Standards Enforcement Compliance Monitoring Unit, as well as the City of Stockton.

#### **4. 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>

Proposer shall complete and include with their proposal a signed Title VI Self-Certification Form (Exhibit B).

The City of Stockton is committed to complying with the requirements of Title VI in all of its programs and activities. Proposers for work with the City of Stockton must meet the requirements of Title VI at all times.

#### **5. DISCRIMINATION AND HARASSMENT POLICY**

The City of Stockton has a Discrimination and Harassment Policy (Exhibit C). 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.

## **6. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE**

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

**PREVAILING WAGE RATES-** The prime Contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates when applicable to this project. In accordance with the provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Wages of the State of California has determined the general prevailing rate 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. These wages are set forth in the General Prevailing Wage Rates for this project and are available from the California Department of Industrial Relations' internet website at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>.

The final contract documents signed by the local agency and the Contractor, will physically include the federal Wage Rates, or federal Wage Rates as revised by addendums, if any such addendums have been issued. Contractor is responsible to comply with the most recent wage rates.

The Contractor performing the work shall be responsible for obtaining a copy of the State wage rate determination. Pursuant to 1773.2 of the Labor Code, the Contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

Title 40, Chapter 31(VI), Section 3143 of the United States Code applies. If any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by the contract is discovered to have been paid a rate of wages less than the contract requires, then the City by written notice may terminate the Contractor's right to proceed with the work in question. The City may have the work completed, by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the City for any excess costs the City incurs.

Attention is directed to the federal minimum wage rate requirements of this contract. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The City will not accept lower State wage rates not specifically included in the federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the federal wage determinations. Where federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the

Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

The U.S. Department of Transportation (DOT) provides a toll-free “hotline” service to report bid rigging activities. Bid rigging activities can be reported Monday through Friday, between 8 a.m. and 5 p.m., eastern time, Telephone No. 1-800-424-9071. Anyone with knowledge of possible bid rigging, proposer collusion, or other fraudulent activities should use the “hotline” to report these activities. The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

(A) **PAYROLL RECORDS**- The prime 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 prime Contractor’s responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors.

(B) **APPRENTICESHIP STANDARDS** - The prime 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.

## **7. NON-COLLUSION DECLARATION**

The proposer shall execute a Non-Collusion Declaration in the appropriate space provided in the bid form. Any bid made without such declaration or in violation thereof, and also any contract let thereunder shall be absolutely void unless a correct declaration is received after the bid deadline with approval of the City Council.

Proposer shall complete and include with their quote a signed Non-Collusion Declaration Form (Exhibit D).

## **8. LABOR NON-DISCRIMINATION**

Attention is directed to the following notice that is required by Chapter 5, Division 4 of Title 2, California Code of Regulations “NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM” (GOV. CODE, SECTION 12990). Your attention is directed to the “Nondiscrimination Clause” set forth elsewhere, “Labor Non-discrimination,” which is applicable to Nonexempt State contracts and subcontracts, and to the “Standard California Nondiscrimination Construction Contract Specifications”: set forth therein. The Specifications are applicable to all Non-exempt State construction contracts of \$5,000 or more.

## **9. BUSINESS LICENSE**

The successful proposer must obtain and maintain a valid City of Stockton business license throughout the fiscal periods embraced by the duration of the contract.

## **10. INSURANCE**

Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this agreement the policies of insurance specified in Exhibit E, which is attached to this agreement and incorporated by this reference.

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.

The Proponent shall satisfy these insurance requirements concurrently with the signing of the contract prior to commencement of work. Please contact City of Stockton Risk Services at (209) 937-5037. Any exceptions to this language may result in a non-responsive proposal.

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 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 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 of Stockton.

The City of Stockton 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 of Stockton in the same manner and to the same extent as Contractor is bound to the City of Stockton under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the City of Stockton Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all sub-contractors 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.

#### **11. INDEMNIFICATION AND HOLD HARMLESS**

Proposers should be aware that the Professional Services contract entered into with the City of Stockton and the Contractor will include the following language and will not be modified:

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subconsultants. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations

allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

**DEPARTMENT OF INDUSTRIAL RELATIONS  
LABOR COMPLIANCE  
SELF-CERTIFICATION**

We, the undersigned, self-certify that we will comply with all California Department of Industrial Relations (DIR) laws, rules and regulations that apply to Public Work as defined in Labor Code Section 1720(a)(1), as well as Senate Bill 854 (2014), and all other related statutes.

In addition, we acknowledge that to be eligible to bid on City of Stockton Public Works projects, we and all subcontractors under us are registered, and will remain registered with the DIR until project completion; otherwise, we will be disqualified from consideration as a bidder for the subject project.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## TITLE VI VIOLATION SELF-CERTIFICATION

We, the undersigned, self-certify that pursuant to Federal Code of Regulations (CFR), 23 CFR 200.9, 633 and 49 CFR 21.7, we do not have any unresolved violations under Title VI of the Civil Rights Act of 1964 and related statutes, including Americans with Disabilities Act (ADA). In addition, we acknowledge that an unresolved Title VI violation will disqualify us for consideration as a bidder for the subject project.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
TITLE

DATE: \_\_\_\_\_

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

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

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

**I. PURPOSE**

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

**II. POLICY**

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

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

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

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PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

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

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

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

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

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

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

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

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

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

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

**IV. REPORTING AND COMPLAINT PROCEDURES**

A. Immediate Action Required

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

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

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



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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	Directive No. <b>HR-15</b>	Page No. <b>8 of 14</b>
	Effective Date:  <b>5/1/2015</b>	Revised From: <b>7/27/09 4/6/09 3/1/2010 (see below)</b>

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

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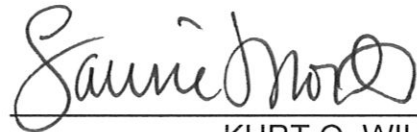
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**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

**NON-COLLUSION DECLARATION**  
(Title 23 United States Code Section 112 and Public  
Contract Code Section 7106)

To the CITY of STOCKTON DEPARTMENT OF PUBLIC WORKS.

The undersigned declares:

I am the \_\_\_\_\_, of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_

(Signature)



**Exhibit E:**  
**Insurance Requirements for Professional Services**

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

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

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

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

**Other Insurance Provisions**

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

**Additional Insured Status**

**The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds** on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (**at least as broad as** ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read “City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers.” Policy shall cover City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers for

all locations work is done under this contract.

### **Primary Coverage**

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to sole negligence of the Named Insured.

### **Notice of Cancellation**

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

### **Waiver of Subrogation**

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

### **Claims Made Policies**

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

### **Verification of Coverage**

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

## **Certificate Holder Address**

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

- City of Stockton
- 400 E Main Street, 3rd Floor – HR
- Attn: City Risk Services
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

## **Maintenance of Insurance**

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

## **Subcontractors**

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

## **Special Risks or Circumstances**

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