



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 6/7/2011

Report Type: Consent

Title: Agreement: Sacramento Anti-Driving Under the Influence (DUI) Media Campaign

Report ID: 2011-00517

Location: Citywide

Recommendation: Recommendation: Adopt a Resolution authorizing the Interim City Manager, or the Interim City Manager's designee, to execute an agreement on behalf of the City of Sacramento, with TMD Group, Inc. in an amount not to exceed \$175,000 for the purpose of conducting an Anti-DUI media campaign in the Sacramento Region.

Contact: Mike McCarthy, Captain, Metro Division, (916) 808-0701, Police Department

Presenter: None

Department: Police

Division:

Dept ID:

Attachments:

- 1-Description/Analysis
- 2- Background
- 3- Resolution
- 4- Exhibit A - PSA DUI Media Campaign
- 5- Attachments 1-3 of Exhibit A
- 6- Attachment 4 of Exhibit A
- 7- Attachment 1-2 of Exhibit A PSA (Exhibit B Section)
- 8- Attachment 5 to Exhibit A PSA - Insurance

City Attorney Review

Approved as to Form
David Womack
6/1/2011 11:22:06 AM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
5/23/2011 10:06:53 AM

Approvals/Acknowledgements

Department Director or Designee: Rick Braziel - 5/26/2011 10:05:13 AM

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
William H. Edgar, Interim City Manager

Russell Fehr, City Treasurer

Assistant City Manager: Cassandra Jennings - 6/1/2011 10:59:22 AM

Description/Analysis

Issue: In September 2010, City Council Resolution #2010-564 authorized the acceptance of \$500,000 in grant funding from the State of California Office of Traffic Safety for Fiscal Year 2010/11 to implement DUI Education programs in the Sacramento Region. As one of its program components, the grant provides funding to develop and conduct a targeted DUI media campaign to educate the public on the deadly consequences of driving impaired. The summer months can be a particularly deadly period. During last summer, from July 1st through September 30th, citywide alcohol-related fatalities and collisions reached their highest three month level since 2008. Consequently, through the use of Office of Traffic Safety grant funds, the Sacramento Police Department plans to conduct a comprehensive DUI media campaign this summer.

The Anti-DUI campaign is tentatively planned to start mid-June 2011. In April 2011, the Police Department issued a bid request soliciting media proposals to conduct a summer-long DUI media campaign. Through a formal bid and selection process, staff and project committee are recommending TMD Group, Inc. as the consultant that will work with the Sacramento Police Department, Office of Traffic Safety, and non-profit Teachable Moment Foundation to develop a targeted DUI media campaign focusing on adult males from the ages of 18 to 34.

Policy Considerations: The City of Sacramento consistently has the highest rate among California's thirteen largest metropolitan areas for alcohol-involved collisions, injuries and fatalities based on per capita population and miles driven. The California Office of Traffic Safety has previously awarded grant funds to the City of Sacramento for DUI enforcement, traffic safety, DUI interventions and media programs.

Environmental Considerations:

California Environmental Quality Act (CEQA): This action is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines, and is otherwise exempt pursuant to section 15061(b)(3) (no significant effect on the environment) of the CEQA Guidelines.

Sustainability Considerations: There are no sustainability considerations associated with this report.

Commission/Committee Action: The proposal review committee has recommended TMD Group, Inc. as the media consultant for the planned DUI campaign.

Rationale for Recommendation: In April 2011, the Police Department issued a Request for Proposal (RFP) for a consultant to conduct a DUI media campaign in the Sacramento Region that targets young males from 18 to 34 years of age. This difficult to reach age group has a high rate of impaired driving. The proposed media campaign

will focus on providing a comprehensive Anti-DUI campaign using radio spots, billboards, movie theaters, and on-line media. A selection committee consisting of staff from the Police Department and Office of Traffic Safety met on May 11, 2011, and, based on the RFP criteria and submission requirements, selected TMD Group, Inc. as the recommended consultant. TMD Group Inc.'s media proposal budget and scope of work fall within the guidelines of the grant program.

Financial Considerations: City Council Resolution #2010-564 approved the acceptance of \$500,000 in grant funding for the Office of Traffic Safety funded Community DUI Education Program implemented by the Sacramento Police Department. Of those funds, \$175,000 will be used towards the recommended Professional Services Agreement with TMD Group, Inc. There is no current or future impact to the General Fund or additional monetary requirement to the City of Sacramento.

Emerging Small Business Development (ESBD): The firm submitting the proposal is certified by the City of Sacramento as a small business enterprise.

Background

Of the thirteen largest metropolitan cities in California, the City of Sacramento has consistently experienced the highest rate of fatal and injury traffic collisions based on per capita population and average number of vehicle miles driven. The California, Office of Traffic Safety (OTS) has funded various traffic enforcement and education programs, and through the combined efforts of OTS and the Sacramento Police Department, in 2009, the City of Sacramento dropped to second in the statewide ranking for traffic collisions injuries and fatalities. However, the City of Sacramento still continues to experience the highest statewide rate for alcohol-related collisions, injuries and fatalities. In 2010, the Office of Traffic Safety awarded the City of Sacramento funding to continue its DUI enforcement and education programs.

In September 2010, Resolution #2010-564 authorized the acceptance of \$500,000 in grant funding from the California Office of Traffic Safety for Fiscal Year 2010/11 to implement DUI Education programs in the Sacramento Region. As one of its program components, the grant provides funding to develop and conduct a targeted DUI media campaign to educate the public on the deadly consequences of driving impaired. The summer months can be a particularly deadly period. During last summer, from July 1 through September 30, citywide alcohol-related fatalities and collisions reached their highest three month level since 2008. Consequently, the Sacramento Police Department plans to conduct a comprehensive DUI media campaign this summer.

In April 2011, the Sacramento Police Department issued a request for proposals to conduct a summer-long DUI media campaign focusing on the difficult to reach 18 to 34 year old adult males, which has been shown to have the highest rate of impaired driving. The proposed media campaign will focus on providing a comprehensive Anti-DUI campaign using radio spots, billboards, movie theaters, and on-line media. The bid proposal review committee consisting of staff from the Police Department and Office of Traffic Safety met on May 11, 2011, and, based on the RFP criteria and submission requirements, selected TMD Group, Inc. as the recommended consultant. TMD Group, Inc.'s media proposal falls within the guidelines of the program budget and scope of work.



RESOLUTION NO.

Adopted by the Sacramento City Council

AGREEMENT: ANTI-DUI MEDIA CAMPAIGN

BACKGROUND

- A.** City Council Resolution #2010-564, dated September 28, 2010, approved the acceptance of \$500,000 in grant funding from the State of California Office of Traffic Safety for Fiscal Year 2010/11 to implement DUI Education programs in the Sacramento Region. As one of its program components, the grant provides funding to develop and conduct a targeted DUI media campaign to educate the public on the deadly consequences of driving impaired.
- B.** Through a formal bid and selection process, staff and the project committee are recommending TMD Group, Inc. as the consultant who will work with the Sacramento Police Department, California Office of Traffic Safety and local non-profit Teachable Moment Foundation to develop and conduct a targeted DUI media campaign focusing on young adults.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Interim City Manager, or the Interim City Manager's designee, is authorized on behalf of the City of Sacramento to execute on behalf of the City of Sacramento, a professional services agreement with TMD Group, Inc. in an amount not to exceed \$175,000 for the purpose of conducting an Anti-DUI media campaign in the Sacramento Region.



PROJECT #: AL1173
PROJECT NAME: Community DUI Education Program
DEPARTMENT: Sacramento Police Department
DIVISION: Metro Traffic Air Operations

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of June 7, 2011, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*TMD Group, Incorporated
1750 Howe Avenue, Suite 110
(916) 487-5109 fax (916) 567-0896*

("CONTRACTOR"), who agree as follows:

- Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document

* This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.

relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: Bill Edgar, Interim City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

TMD Group, Incorporated
NAME OF FIRM

71-0904166
Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify: _____*)

Signature of Authorized Person

Patricia Costanga, President
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Patricia Costanza

Address: 1750 Howe Avenue, Suite 110, Sacramento, CA 95825

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the [Ordinance](#)).
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such

policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 - 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 - 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 - 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Patricia Costanza
Print Name

President
Title

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Craig Mohar, Program Manager
Sacramento Police Department
5770 Freeport Blvd, Suite 100
(916) 874-2011, cmohar@pd.cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Patricia Costanza, President
1750 Howe Avenue, Suite 110
(916) 487-5109*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is X is not [check one] required for this Agreement. If required, such coverage must be continued for at least 1 year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: yes no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the assuming office statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** *[Describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]*

The services provided shall be as set forth in Attachments to Exhibit A, attached hereto and incorporated herein.

5. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services (Attachment 2 – Schedule of Media Campaign).

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$ 173,273.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. *[Attach list of billable rates that apply, labeled "Attachment 1 to Exhibit B".]*
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract
 - (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

- C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
- D. Requests for payment shall be sent to:

*Office of the Chief
Fiscal Operations, 1021
Sacramento Police Department
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822
(916) 808-0838, caautio@pd.cityofsacramento.org
Attn: Christine Autio*

- 5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.
- 6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
- 7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such 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 7.

EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT
FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*] Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; [*list, if applicable*]

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

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 shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall 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 but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, 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 shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, 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.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) 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.
6. **Confidentiality of CITY Information.** During performance of this Agreement, 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 shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall 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. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term “information” shall be construed to mean and include: 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 and every 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 pursuant to this Agreement 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 (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY’s failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- 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 any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to 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 shall then have five (5) days from the date it receives such 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 such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual “trade secret” designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.

C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:

(1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.

(2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

10. 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 any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or 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 but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or 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 Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control 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 Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, 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, 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.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis 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.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this agreement.” _____ (CONTRACTOR initials)

- (3) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker’s Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Workers’ Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers’ Compensation insurance shall be required if CONTRACTOR completes the following certification:

“I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers’ Compensation insurance.” _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: 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, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, 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 Agreement 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 such 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 Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, 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. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall 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 such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. 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 Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract or Agreement

and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for the Contract or Agreement.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas

and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

Attachment 1 to Exhibit A



City of Sacramento – ANTI-DUI Media Campaign Summary Scope of Services

Consultant shall develop and provide a comprehensive media campaign in Sacramento County to depict the dangerous consequences of impaired driving. The media campaign is part of a DUI study funded by the Office of Traffic Safety to determine whether an extensive DUI program, which includes intervention, enforcement, vehicle impoundment and media advertising can reduce the rate of DUI driving.

The DUI study is being conducted in partnership with the Teachable Moment Foundation, Sacramento Police Department, and Sacramento County Sheriff’s Department, UC Davis Medical School, and the California Office of Traffic Safety. The consultant will collaborate with these partners, as necessary, in the development and implementation of the campaign concepts. A steering committee comprised of the City of Sacramento, Teachable Moment Foundation and Office of Traffic Safety shall work together to provide guidance and approval of all media advertising funded through this contract.

NATURE OF SERVICES REQUIRED

General

A targeted campaign shall provide the designated population of young males between 18 to 34 years old with relevant educational messages that dramatically inform them of the consequences of drinking and driving. The media campaign is designed to enhance the effectiveness of the programs three other components.

A grant from the Office of Traffic Safety shall fund the production and purchase of media buys of DUI creative concept proposals. The planned media concept shall focus on the Every37.com campaign to illustrate that on average someone is killed every 37 minutes in an alcohol-related collision in the United States. The affect of the media campaign shall be evaluated by UC Davis to determine its overall impact on the rate of impaired driving in Sacramento County.

SCHEDULE REQUIREMENTS

Media Campaign Begins	June 15, 2011
Media Campaign Completes	September 30, 2011
Final Report due	October 10, 2011

The City shall work with the consultant(s) to adjust these schedules as necessary due to factors outside the control of the City or the consultant(s).

SCOPE OF WORK

Media Campaign Plan

The goal for the media campaign is to create an integrated strategy of radio, out-of-home, online and projection media to reach as much of the target audience as possible with substantial frequency. Repeatedly reaching out to this hard-to-persuade target audience is critical. A combination of traditional and non-traditional media is needed to achieve this goal. Media options may include purchasing previously created DUI media from other states and agencies.

Media Objective

Reach adult males 18-34 in Sacramento County with anti-drinking and driving messages.

Target Audience

Men 18 to 34
Population: 262,400

Geography

Sacramento County

Total Media Mix in order of preference:

- Radio
- Billboards and Movie Theaters
- Electronic Billboards
- Online

Billboards

Billboards provide major impact and achieve very quick reach and frequency. Billboards provide advertisers continuous presence since the message stays up 24 hours a day, 7 days a week.

Target Months: July, August and September

Movie Theaters

Movie Theaters allow for geographical targeting of a captive audience.

Target Months: July, August and September

Electronic Billboards

Electronic billboards or full motion video projected onto suitable backdrops in high-traffic/nightlife areas during the promotional campaign.

Months Running: July, August and September

Radio

Radio reaches 96% of people over the age of 12 in one week and 77% in one day. The average American listens to the radio three hours and 45 minutes per day, making radio an excellent vehicle to broadcast top-of-mind messages. Radio's relatively low cost provides the ability to run a high frequency campaign (frequency is the number of times a listener hears the message), which means that our target audience shall hear our messages multiple times increasing the potential for the listener to respond. Thirty-second radio spots should primarily run between the hours of 7 pm to midnight and midnight to 3 am. The spots shall be strong reminders to listeners to not drink and drive. The spots should run on Thursday, Friday and Saturday nights.

Months Running: June, July, August, September

Online

Online media, such as NapkinNights.com, which is one of the leading nightlife websites, to specifically target the young adult male audience 18 to 34 years of age.

Months Running: July, August, September

Campaign Summary:

Monthly Overview

June through September – The summer media flight shall launch before school summer vacation and the Fourth of July holiday. All advertising elements shall be in English, with radio and billboard ads also produced in Spanish. Billboards should be placed based on demographics provided by the local billboard vendor, which focuses on target audience.

Attachment 2 to Exhibit A

Duties and Responsibilities

Consultant shall oversee the development and administration of the media advertising campaign. Their duties and responsibilities shall include the following:

1. Provide all equipment, facilities, subcontractors and experienced management and creative personnel for the production, distribution and implementation of the targeted impaired driving campaign. Project components shall be in English and/or Spanish. Personnel Services or associated services required to complete the project may include, but are not limited to: creative development, production, post-production, administration, budget management, project accounting, distribution, research and evaluation, air buys, outdoor/transit buys, internet ad buys, casting, booking and pay rolling of all personnel, payment of all talent fees, graphic arts, printing and creating internet/digital resources. Project receivable may include, but are not limited to: television spots, radio spots, CD/CD ROMS/DVD, billboards, internet resources and associated print and electronic materials.
2. All project management and accounting shall be the responsibility of the Contractor. It is the Contractor's responsibility to keep the City of Sacramento and Teachable Moment Foundation fully informed and up-to-date on the status of the project and to identify and make recommendations for any changes which may be necessary.
3. The Contractor shall be responsible for close captioning of all English and Spanish materials (including but not limited to: TV messages, VHS/DVD materials, etc.).
4. The Contractor shall develop the project in accordance with City and Teachable Moment Foundation media objectives to reach the following target audience:
 - a. Target Audience: adult males 18 to 34 years
 - b. Speak/read English or speak/read Spanish, depending on the specific group being targeted in the campaign strategy.
5. The Contractor shall develop a finalized plan, timeline for each component of this project including:
 - a. Production component delivered to City and Teachable Moment Foundation twenty (20) days after contract start date.
 - b. Media component delivered to City and Teachable Moment Foundation twenty (20) days after contract start date.
 - c. Each of these finalized plans must be approved by City and

Teachable Moment Foundation prior to implementation.

6. The Contractor shall be responsible for providing City and Teachable Moment Foundation with written change orders for any agreed upon modification to the Project's Scope of Work or Budget. All Change Orders required written City approval.
7. The Contractor shall be responsible for the quality and acceptability of all work and for all persons engaged in work, including, but not limited to: employees, subcontractors, independent contractors, suppliers and other providers of services.
8. Upon completion of the project, the Contractor shall submit to City and Teachable Moment Foundation, a detailed report demonstrating how the project goals were met, including a complete summary of all project related activities. The reporting requirement is further described under Performance Measures.
9. The City and Teachable Moment Foundation steering committee may be present and actively involved in all phases of project development and execution.
10. All rates for personnel, services and facilities not listed in this agreement shall be at a negotiated rate and approved by City.
11. The Contractor shall have the right to use the completed products under this agreement, in their entirety, for non-commercial educational and scholarly purposes. No rights shall be given for use by the Contractor (or/and subcontractors) of any production elements.
12. The City retains the right at its discretion to increase, decrease or reallocate funding related to the product subject to the decisions made by the program's steering committee.
13. The City, working with the project's steering committee, shall have final approval in all component areas. The Office of Traffic Safety has final funding authority over all components of this contract and may deny Contractor payment for services it determines unallowable.
14. The following standard language may be required in all press, media and printed materials: "This message brought to you by funding from the California Office of Traffic Safety, through the National Highway Traffic Safety Administration." Guidance regarding the inclusion and appropriateness of the standard language in the media campaign components shall be provided by the steering committee with OTS consent.

Attachment 3 to Exhibit A

Performance Measures

Results shall be monitored and tracked throughout the campaign. During the month after media buys run, an analysis and affidavit report of media results shall be provided to the City of Sacramento Police Department and the California Office of Traffic Safety. Additional information regarding the media campaign shall also be provided, as needed, to UC Davis Medical School for evaluating the overall DUI research study component.

The monthly report shall include a complete description and summary by media category and shall be attached to each invoice submitted for reimbursement. This monthly report shall be required for payment of services. The description shall include times, costs, dates and explanations of the type, content and status, including statistical data of targeted groups, of each media component completed and proposed in the next phase of the media campaign. Any unexpected problems or issues affecting the performance of the agreement, including impact upon planned timelines, shall be immediately identified and addressed to the City of Sacramento and the non-profit Teachable Moment Foundation. The consultant agrees to provide any additional information that may be required by the Office of Traffic Safety and/or City of Sacramento to adhere to their audit, compliance, funding and contracting requirements.

A. Optional Items That May Be Required on Request

Based on mutual agreement between the City and Consultant, the contract may be amended to include additional media buys.

B. Deliverables

1. Media plan with clearly defined objectives, strategies and outcome measures.
2. Create and deliver a production component to the media plan.
3. Drafts of advertisement materials produced or purchased for approval.
4. Final advertisement materials produced or purchased.
5. Copies of all media buy and/or placement plans for approval.
6. Affidavits of media placements.
7. Monthly progress reports

Attachment 4 to Exhibit A

CALIFORNIA OFFICE OF TRAFFIC SAFETY: GENERAL TERMS, CONDITIONS, AND CERTIFICATIONS

These terms and conditions, when applicable, are to be incorporated by reference and made a part of, but not necessarily limited to, the following documents: grants, subgrants, contracts, subcontracts, interagency agreements, invitations for bid, and requests for proposal for goods or services for which Office of Traffic Safety grant funding reimbursement is requested.

1. **Amendment.** No amendment or variation of the terms of this agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the agreement is binding on any of the parties. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

2. **Antitrust claims.** The contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the contractor shall comply with the requirements of the Government Code sections set out below.

a. The Government Code chapter on antitrust claims contains the following definitions:

(1) —Public purchase|| means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

(2) —Public purchasing body|| means the state or the subdivision or agency making a public purchase. (Reference: GC Section 4550)

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15 [Title 15 Commerce and Trade, Chapter 1, Monopolies and Combinations in Restraint of Trade, Section 15, Suits by Persons Injured]) or under the Cartwright Act (Chapter 2) commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Reference: GC Section 4552)

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Reference: GC Section 4553)

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been

injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. (Reference: GC Section 4554)

3. **Approval.** This agreement is of no force or effect until signed by both parties and approved by the Office of Traffic Safety. Subgrantee, contractor, or subcontractor may not commence performance until such approval has been obtained. (Reference: California Department of General Services (DGS) Standard Agreement —General Terms and Conditions,|| form GTC610)

4. **Assignment.** This agreement is not assignable by the contractor, either in whole or in part, without the consent of the Office of Traffic Safety in the form of a formal written amendment. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

5. **Audits and access to records.** Contractor agrees that the California Office of Traffic Safety, the National Highway Traffic Safety Administration, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement. (Reference: Government Code (GC) 8546.7, Public Contract Code (PCC) 10115 et seq., California Code of Regulations (CCR) Title 2, Section 1896).

6. **Availability of funds.** It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

This contract is valid and enforceable only if sufficient funds are made available to the state by the United States Government for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds. The Administrator has the option to void the contract under the thirty-day cancellation clause or to amend the contract to reflect any reduction for funds.

(Reference: State Contracting Manual, Chapter 3)

7. **Buy America Act.** (Applies only to Federal-aid construction grants located on federal-aid highways, highways classified as local roads and rural minor collectors and transportation enhancement grants.) Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and of a satisfactory quality; or that inclusion of domestic materials will increase the cost of the overall grant contract by more than 25 percent. Clear justification for the

purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation. (Reference: —Buy America Act|| 49 USC 5323)

8. Byrd Anti-Lobbying Amendment (31 USC 1352). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

9. Child Support Compliance Act. —For any agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.|| (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

10. Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. Compensation. The consideration to be paid contractor, as provided herein, shall be in compensation for all of contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

12. Consultant/Subcontracts.

Competition. No grantee shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a consulting services contract, in such a manner as to limit the bidding directly to any one bidder. At least three competitive bids or proposals shall be secured for each consulting services contract. (Reference: PCC §§ 10372 and 10373)

Independent contractor. Contractor, and the agents and employees of contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the state. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

Progress schedule. Grantees entering into a contractual agreement for consultant services totaling five thousand dollars (\$5,000) or more shall include detailed criteria and a mandatory progress schedule. (Reference: PCC § 10371)

Progress payments: Grantees may provide for progress payments to consultants for work performed or costs incurred in the performance of the contract. Not less than ten percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. If the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. (Reference: PCC § 10379)

13. Contract Work Hours and Safety Standards Act (40 USC 327-333). Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

14. Convict/forced labor. No foreign-made equipment, materials, or supplies furnished pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. (Reference: PCC § 6108)

15. Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c). All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland —Anti-Kickback|| Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, —Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States||). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the federal awarding agency.

16. Copyrights (41 CFR 105-71.134). The federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

17. Credits/Disclaimer (OTS Grant Program Manual, Chapter 7). The Final Report, in addition to any other credits, shall include the following statement: —This grant is a part of the California Traffic Safety Program and was made possible through the support of the California Office of Traffic

Safety; Business, Transportation and Housing Agency; State of California; and the National Highway Traffic Safety Administration.||

In addition, the Final Report shall include the following statement: —The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of California, or the National Highway Traffic Safety Administration.||

18. Davis-Bacon Act, as amended (40 USC 276a to a-7). When required by federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, —Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction||). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the federal awarding agency.

19. Debarred and suspended parties. Grantees, subgrantees, contractors, and subcontractors must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, —Debarment and Suspension.|| (Reference: 49 CFR 18.35)

20. Disadvantaged business enterprise/small business affirmative steps. Grantees, subgrantees, contractors, or subcontractors will take all necessary affirmative steps to assure that disadvantaged business enterprises (DBE), as defined in 49 CFR Section 26.5, and labor surplus area firms are used when possible. Affirmative steps shall include:

- a. Placing qualified DBEs and small businesses on solicitation lists.
- b. Assuring that DBEs and small businesses are solicited whenever they are potential sources.
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and DBEs.
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and DBEs.
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

(Reference: 49 CFR 18)

21. Disclosure requirements.

a. Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the contract numbers and the dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report when the total cost for such work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be set forth in a separate section of each such document or written report.

b. When multiple documents or written reports are the subject or product of the contract, the total contract amount is deemed to represent the compensation for those multiple documents or written reports. (Reference: GC § 7550)

22. Disputes. Contractor shall continue with the responsibilities under this agreement during any dispute. (Reference: DGS Standard Agreements —General Terms and Conditions,|| form GTC610)

23. Document Retention and Access. The Grantee certifies that it will comply with the retention and access requirements for records established by 49 CFR Part 18.42. The required records and documentation relating to the grant and/or sub-contract shall be retained for a minimum of three years after the starting date of the retention period as defined in Section 18.42. The OTS or their authorized representative shall have the right of access to any books, documents, papers, or other records of grantees, contractors, or sub-contractors which are pertinent to the grant and/or contract, in order to make audits, examinations, excerpts and transcripts. The right of access is not limited by the required retention period and shall last as long as the records are retained.

24. Equipment. Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the state; or the state, by formal agreement with appropriate officials of a political subdivision or state agency, shall cause such equipment to be used and kept in operation for highway safety purposes. (Reference: 23 CFR 1200.21)

25. Equal employment opportunity. All contracts shall contain a provision requiring compliance with E.O. 11246, —Equal Employment Opportunity,|| as amended by E.O. 11375, —Amending Executive Order 11246 Relating to Equal Employment Opportunity,|| and as supplemented by regulations at 41 CFR Part 60, —Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor.|| (Reference: OMB Circular A-110, Appendix A—reference applies to Clauses 31 through 37)

26. Financial management system. The grantee, subgrantee, contractor, or subcontractor will comply with all applicable state, local, and federal procurement procedures and will maintain a financial management system that complies with the minimum requirements of 49 CFR 18.20.

27. Governing law. This contract is governed by and shall be interpreted in accordance with the laws of the State of California. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

28. Indemnification: Contractor agrees to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and

all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by contractor in the performance of this agreement. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

29. Intangible property.

a. The recipient (grantee, subgrantee, contractor, or subcontractor) may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under award. The California Office of Traffic Safety and the National Highway Traffic Safety Administration reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

b. Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, —Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.||

c. The federal government has the right to:

(1) obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

d.

(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the federal government in developing an agency action that has the force and effect of law, the federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable sub recipients. This fee is in addition to any fees the agency may assess under the FOIA (5 USC 552(A)(4)(a)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This —recorded|| material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the federal government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

e. Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of OMB Circular A-110, paragraph 34(g).

(Reference: Office of Management and Budget (OMB) Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments)

30. **Logos.** The OTS logo will appear on all promotional materials where appropriate and practical. Contact the appropriate OTS Coordinator for copies.

31. **Non-discrimination clause.**

State requirements: During the performance of this agreement, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Federal requirements: In addition to state non-discrimination requirements, grantees, subgrantees, contractors, and subcontractors will comply with all federal statutes and implementing regulations relating to nondiscrimination. Federal nondiscrimination statutes include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits

discrimination on the basis of race, color, or national origin and (49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 USC §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of handicaps; Americans with Disabilities Act of 1990 (42 USC §§ 12101 et seq., PL 101-336) and implementing regulations, relating to nondiscrimination on the basis of disability, 29 CFR Parts 160, 1602 (Title I, EEOC), 28 CFR Part 35 (Title II, Department of Justice) 49 CFR Parts 27, 37, 38 (Title II, III, Department of Transportation) 28 CFR Part 36 (Title III, Department of Justice), 47 CFR §§ 64.601 et seq. (Title IV, FCC), and 49 CFR Part 27 (d) the Age Discrimination Act of 1975, as amended (42 USC §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 USC §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of house; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

32. Political Activity (Hatch Act). All individuals employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, including grants from the California Office of Traffic Safety, have been made aware of the provisions of 5 USC, Government Organization and Employees; Part II, Civil Service Functions and Responsibilities; Chapter 15, Political Activity of Certain State and Local Employees; Sections 1501 through 1508. This statute does not include individuals employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization. (Reference: 5 USC §§ 1501-1508 and 7324-7328; and 5 CFR 151)

33. Priority hiring considerations: For contracts in excess of \$200,000, the contractor, in accordance with the California Public Contracting Code § 10353, shall consider filling vacancies in positions funded by the contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a grant as defined in Section 10105. (Section 10105 defines a grant as —. . . the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed a total cost calculated pursuant to subdivision (b).) This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

a. Interfere with or create a violation of the terms of valid collective bargaining agreements.

- b. Require the contractor to hire an unqualified recipient of aid.
- c. Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.
- d. Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code.

(Reference: PCC § 10353)

34. Program Income (41 CFR 105-71.125 and OTS Grant Program Manual, Chapter 1). Grant/contract activities that generate revenues as a result of NHTSA-OTS funding must be reported to OTS. Written notification of the source and amount of such income must be made to OTS at the earliest opportunity. A separate account must be maintained for the collection, expenditure, and disposition of program income. Program income generated shall be utilized to further the objectives of the grant or reduce current grant costs. Records shall be held for a period of three years after the final reimbursement and close of the grant/contract.

35. Recycling certification. The contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the produce meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Reference: PCC § 10233, 10308.5, 10354)

36. Rights to inventions made under a contract or agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR part 401, —Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements,|| and any implementing regulations issued by the awarding agency.

37. Single Audit Act Certification. The OTS is the agency responsible for administering California's' federal highway safety funds on behalf of the Governor. Federal funds are provided for this grant by the United States Department of Transportation. The records and supportive documentation for all completed grants are subject to an on-site audit and OTS reserves the right to inspect and review during normal working hours the work product of any independent auditor in support of their audit.

The Grantee certifies that it will comply with the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.), as amended, which requires the following:

a. State or local governments that receive \$500,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.

b. State or local governments that receive less than \$500,000 a year shall be exempt from compliance with the Act and other federal audit requirements.

c. Nothing in this paragraph exempts State or local governments from maintaining records of federal financial assistance or from providing access to such records to Federal Agencies, as provided for in federal law or in Circular A-133 —Audits of States, Local Governments and Non-Profit Organizations||.

d. The State Controller’s Office notifies OTS of those cities, counties, and special districts that have not submitted an audit report or have not indicated to SCO that they are exempt each fiscal year. Grantee agencies that are not in compliance will be notified and required to provide verification of compliance or be subject to sanctions including, reimbursement withholding or grant cancellation.

38. **Solicitation.** No employee of the applicant agency, the contractor, or any agency acting on behalf of the agency, may solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

39. **Termination for cause.** The Administrator may terminate this agreement and be relieved of any payments should the Contractor fail to perform the requirements of this agreement at the time and in the manner herein provided. In the event of such termination the Administrator may proceed with the work in any manner deemed proper by the Administrator. All costs to the state shall be deducted from any sum due the contractor under this agreement and the balance, if any, shall be paid to the contractor upon demand. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

40. **Termination without cause.** The Administrator may terminate unilaterally and without cause upon thirty days written notice to the Contractor. All work performed pursuant to the contract and prior to the date of termination may be claimed for reimbursement. (Reference: State Contracting Manual, Chapter 3)

41. **Timeliness.** Time is of the essence in this agreement. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

42. **Unenforceable provision.** In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be effected thereby. (Reference: DGS Standard Agreement —General Terms and Conditions,|| form GTC610)

CERTIFICATIONS AND ASSURANCES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements (GC 12990 (a-f) and CCR, Title 2, Section 8103). (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the person's or organization's policy of maintaining a drug-free workplace;

(3) any available counseling, rehabilitation, and employee assistance programs; and,

(4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed agreement will:

(1) receive a copy of the company's drug-free workplace policy statement; and,

(2) agree to abide by the terms of the company's statement as a condition of employment on the agreement.

Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both and grantee, subgrantee, contractor, or subcontractor may be ineligible for award of any future state agreements if the Office of Traffic Safety or the National Highway Traffic Safety Administration determines that any of the following has occurred: (1) the grantee, subgrantee, contractor, or subcontractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.) (The Drug-Free Workplace Act of 1988 49 CFR Part 29 Subpart F)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Grantee, subgrantee, contractor, or subcontractor certifies that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against contractor within the immediately preceding two-year period because of contractor's failure to comply with an order of a federal court which orders contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST. Grantee, subgrantee, contractor, or subcontractor needs to be aware of the following provisions regarding current or former state employees. If grantee, subgrantee, contractor, or subcontractor has any questions on the status of any person rendering services or involved with the agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410)

a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.

b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411)

a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving state service.

If grantee, subgrantee, contractor, or subcontractor violates any provisions of above paragraphs, such action by grantee, subgrantee, contractor, or subcontractor shall render this agreement void. (PCC 10420) Members or boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430(e))

2. LABOR CODE/WORKERS' COMPENSATION: Grantee, subgrantee, contractor, or subcontractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and grantee, subgrantee, contractor, or subcontractor affirms to comply with such provisions before commencing the performance of the work of this agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Grantee, subgrantee, contractor, or subcontractor assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 USC 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the grantee's, subgrantee's, contractor's, or subcontractor's name as listed on this agreement. Upon receipt of legal documentation of the name change an amendment will be processed. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. —Doing business|| is defined in Revenue and Taxation Code (R&TC) Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. **RESOLUTION:** Upon request, a county, city, district, or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. **AIR OR WATER POLLUTION VIOLATION:** Under the state laws, the grantee, subgrantee, contractor, or subcontractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

CERTIFICATION REGARDING NON-DUPLICATION OF GRANT FUNDING

The certifying applicant has no ongoing or completed grants under agreement with other federal funding sources which duplicate or overlap any work contemplated or described in this traffic safety grant. It is further agreed that any pending or proposed request for other federal grant funds which would duplicate or overlap work under this traffic safety grant will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of federal fund expenditures subsequently determined by audit will be subject to recovery by the Office of Traffic Safety.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for grants, subgrants, contracts, subcontracts, and cooperative agreements. Signatories to this agreement certify to the best of their knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the above signed, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the above signed shall complete and submit Standard Form-LLL, —Disclosure Form to Report Lobbying,|| in accordance with its instructions.

3. Signatories to this agreement shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, contracts, and

subcontracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CERTIFICATION REGARDING STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., —grassroots||) lobbying activities, with one exception. This does not preclude a state official whose salary is supported with National Highway Traffic Safety Administration funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal. (49 CFR 29)

POLICY TO BAN TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to:

1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted driving including policies to ban text messaging while driving—

a. Company-owned or –rented vehicles, or Government-owned, leased or rented vehicles; or

b. Privately-owned when on official Government business or when performing any work on or behalf of the Government.

2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as –

- a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

ENVIRONMENTAL IMPACT

Signatories to this agreement hereby declare that no significant environmental impact will result from implementing this grant or service. If, under a future amendment, this grant or service will be modified in such a manner that a grant would be instituted that could affect environmental quality to the extent that a review and statement would be necessary, the Office of Traffic Safety has certified to the National Highway Traffic Safety Administration that it is prepared to take the action necessary to comply with the National Environmental Policy Act of 1969 (42 USC 4321 et seq.). (Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR 1500 - 1517)

ENERGY EFFICIENCY

It is understood the certifying applicant will purchase only energy efficient equipment, whenever possible and appropriate.

LIMITED ENGLISH PROFICIENCY (LEP)

The certifying applicant will take reasonable steps to ensure meaningful access by persons with limited English proficiency to the information and services provided through federal financial assistance.



Exhibit B

ATTACHMENT 1– SCHEDULES OF PROFESSIONAL FEES AND EXPENSES

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES FOR THE SACRAMENTO ANTI-DUI MEDIA CAMPAIGN

Budget Justification Schedule

Line Item (Description)	Amount	Explanation including Breakdown of Costs
Cost of 30 second radio spot:	7 pm-mid Mid-3am	All rates are net. All rates are for 30 sec's; 24 30 sec. per week per station for 15 weeks, for a total of 1,800 paid announcements
KRXD	\$55.25 \$4.25	
KRND	\$46.75 \$4.25	
KNCI	\$40.00 \$5.00	
KSFM	\$60.00 \$5.00	
KXSB	\$42.50 \$4.25	
Per day cost of electronic billboard advertising	\$1,035.71	Eight second message will run on each networks (2) every 64 seconds
Per month cost of non-electronic billboard advertising	\$18,700 \$ 2,890 \$11,700 \$ 1,530	Space rental 50 showing Production 50 showing (34 billboards) Space rental 25 showing (18 billboards) Production 25 showing
Movie Advertising	\$34,308.69 \$ 303.00 \$ 1,530.00	13 wks./101 screens per wk. 3 wks. added value \$1/wk./screen Media services setup charge Approx. No. of ads to run: 56,560, 3,535 per wk.
On-line advertising	\$10,000	Various website, facebook, napkinnights, You Tube
Per hour pricing for each consultant or project staff member.	\$150 hr./40 hrs./15 hrs. pro bono \$185 hr./15 hrs./5 hrs. pro bono \$100 hr./58 hrs./30 pro bono \$65 hr./30 hrs./15 hrs. pro bono \$85 hr./40 hrs./15 hrs. pro bono \$50 hr./20 hrs./10 hrs. pro bono \$45 hr./30 hrs./15 hrs. pro bono	Project Director/Creative Director Research Director Media Director Production Manager Graphic Designer Accounting Manager Admin. Support

Exhibit B

ATTACHMENT 2 – SCHEDULE OF MEDIA CAMPAIGN

TIMELINE FOR THE SACRAMENTO ANTI-DUI MEDIA CAMPAIGN

<u>Media Components</u>	<u>Time Period (Month, Week, etc.)</u>
Radio: KRXQ KDND KNCI KSFM KSXE	15 consecutive weeks beginning June 15, 2011 15 consecutive weeks beginning June 15, 2011
<u>Media Components</u>	<u>Time Period (Month, Week, etc.)</u>
Cinema Advertising	16 consecutive weeks beginning June 15, 2011
<u>Media Components</u>	<u>Time Period (Month, Week, etc.)</u>
Billboards: 50 showing Billboards: 25 showing Electronic Billboards	Four weeks beginning June 15, 2011 Four weeks beginning August 17, 2011 Four weeks beginning June 15, 2011
<u>Media Components</u>	<u>Time Period (Month, Week, etc.)</u>
On-line Advertising: Napkin Nights Facebook Radio Station websites	15 consecutive weeks beginning June 15, 2011



CERTHOLDER COPY

NF



P.O. BOX 420807, SAN FRANCISCO,CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 05-19-2011

GROUP:
POLICY NUMBER: 1636345-2011
CERTIFICATE ID: 17
CERTIFICATE EXPIRES: 05-01-2012
05-01-2011/05-01-2012

CITY OF SACRAMENTO NF
ATTN CRAIG MOHAR METRO TRAFFIC AIR OPER
5770 FREEPORT BLVD STE 100
SACRAMENTO CA 95822-3518

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon **30** days advance written notice to the employer.

We will also give you **30** days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

James Neary
Authorized Representative

Thomas E. Rone
President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - PATRICIA COSTANZA P S T - EXCLUDED.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 05-01-2008 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

TMD GROUP INC
1750 HOWE AVE STE 110
SACRAMENTO CA 95825

NF

[REW,CS]