

## RESOLUTION NO. 2012-399

Adopted by the Sacramento City Council

November 27, 2012

### APPROVING A FOUR-AND-AHALF-YEAR AGREEMENT, WITH THE OPTION TO EXTEND FOR TWO ADDITIONAL TWO-YEAR TERMS, WITH THE OLD SACRAMENTO BUSINESS ASSOCIATION AND DOWNTOWN SACRAMENTO PARTNERSHIP TO MARKET AND PROMOTE THE OLD SACRAMENTO HISTORIC DISTRICT AND ADMINISTER THE OLD SACRAMENTO BUSINESS IMPROVEMENT AREA FUNDS

#### Recitals

- A. In 1984, the Sacramento City Council established the Old Sacramento Business Improvement Area ("the BIA") in accordance with the "Parking and Business Improvement Area Law of 1979," sections 36500 et seq. of the California Streets and Highways Code (repealed and reenacted as the "Parking and Business Improvement Area Law of 1989" Stats. 1989 ch. 591 § 1) ("BIA Law") and Sacramento City Code Chapter 3.96. The establishment of the BIA permits the levy of an assessment ("Assessment") on businesses within the BIA, the revenues of which fund the activities and improvements described in Chapter 3.96.
- B. The mission of the Old Sacramento Business Association ("OSBA") is to work in partnership with the City of Sacramento, the Historic Old Sacramento Foundation, the State of California, property owners, merchants, and other stakeholders to fulfill Old Sacramento's promise as a historical riverfront district alive with the finest in today's dining, shopping and entertainment experiences. The mission of the Downtown Sacramento Partnership ("DSP") is to establish downtown Sacramento as the vibrant arts, entertainment, business and cultural destination of the Greater Sacramento Region through effective public-private collaboration for the benefit of residents, visitors, and investors. The DSP shall provide management and operational oversight for all OSBA programs and activities.
- C. Section 3.96.080 of the Sacramento City Code authorizes the City Council to contract with an entity for the administration of the BIA's activities if, in the City Council's opinion, the entity (1) is capable of representing the interests of the businesses in the area; (2) has general objectives that are consistent with the purposes of the Chapter; and (3) will provide the resources to effectively achieve those objectives.
- D. The OSBA and DSP will collaborate and cooperate with the Historic Old Sacramento Foundation, the City, the State, and other Old Sacramento stakeholders to develop, manage, and promote a single vision for Old Sacramento and align all activities with that vision in order to create a comprehensive, integrated, and quality program for the OSHD.

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

Section 1. In accordance with Section 3.96.080 of the Sacramento City Code, the City Council finds that the OSBA and DSP are (1) capable of representing the interests of the businesses in the Old Sacramento Historic District; (2) have general objectives that are consistent with the purposes of Chapter 3.96 of the City Code; and (3) will provide the resources to effectively achieve those objectives.

Section 2. The City Manager or his designee is authorized to execute a four-and-a-half-year agreement, with the option to extend for two additional two-year terms, with the OSBA and DSP to market and promote the Old Sacramento Historic District and administer the BIA funds at a cost of \$37,000 annually (attached as Exhibit A).

Section 3. Exhibits A is a part of this Resolution.

**Table of Contents:**

Exhibit A Agreement between the City of Sacramento, the Old Sacramento Business Association, and the Downtown Sacramento Partnership for the Administration of the Old Sacramento Business Improvement Area

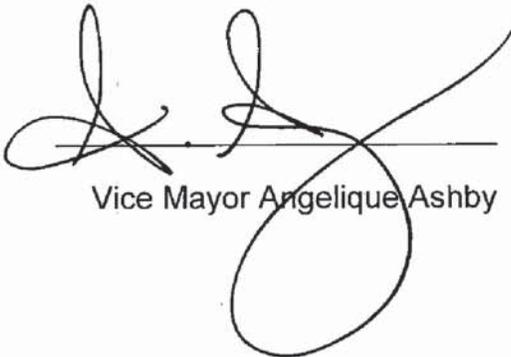
Adopted by the City of Sacramento City Council on November 27, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Vice Mayor Angelique Ashby

Attest:



Shirley Concolino, City Clerk



# City of Sacramento

Tax ID # If applicable:

Requires Council Approval:  No  YES Meeting: 11/27/12

Real Estate  Other Party Signature Needed  Recording Requested

## General Information

Type: Select Contract Type	PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 37,000		Original Doc Number:
Other Party: Old Sacramento Business Association/Downtown Sacramento Partnership		Certified Copies of Document::
Project Name:		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:

## Department Information

Department: CCL Division: Admin  
 Project Mgr: Barbara Bonebrake Supervisor: Barbara Bonebrake  
 Contract Services: Date: Division Mgr: Barbara Bonebrake  
 Phone Number: x 7733 Org Number: 17000  
 Comment:

## Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	_____	_____
Accounting:	_____	_____
Contract Services:	_____	_____
Supervisor:	_____	_____
Division Manager:	_____	_____

City Attorney	Signature or Initial	Date
City Attorney:	KCB	11/19/12

Send Interoffice Mail  Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director Department Director:	_____	_____
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>	_____	_____

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

<b>For City Clerk Processing</b>	
Finalized:	
Initial:	
Date:	
Imaged:	
Initial:	
Date:	
Received:	
<small>(City Clerk Stamp Here)</small>	

## **Agreement for Administration of the Old Sacramento Business Improvement Area**

This agreement ("Agreement") is made as of \_\_\_\_\_ by and among the City of Sacramento, a municipal corporation, ("City"), the Old Sacramento Business Association, a California nonprofit corporation (the "OSBA"), and the Downtown Sacramento Partnership, a California nonprofit corporation (the "DSP"). OSBA and DSP are sometimes referred to together as "OSBA/DSP". The City, OSBA and DSP may be referred to collectively as "Parties" or in the singular as "Party", as the context requires.

### **Background**

In 1984, the Sacramento City Council established the Old Sacramento Business Improvement Area ("the BIA") in accordance with the "Parking and Business Improvement Area Law of 1979," sections 36500 et seq. of the California Streets and Highways Code (repealed and reenacted as the "Parking and Business Improvement Area Law of 1989" Stats. 1989 ch. 591 § 1), ("BIA Law"), and Sacramento City Code Chapter 3.96. The establishment of the BIA permits the levy of an assessment ("Assessment") on businesses within the BIA, the revenues of which fund the activities and improvements described in Chapter 3.96.

The mission of the OSBA is to work in partnership with the City of Sacramento, the Historic Old Sacramento Foundation (HOSF), the State of California, property owners, merchants and other stakeholders to fulfill Old Sacramento's promise as a historical riverfront district alive with the finest in today's dining, shopping and entertainment experiences. The mission of the DSP is to establish downtown Sacramento as the vibrant arts, entertainment, business and cultural destination of the Greater Sacramento Region through effective public-private collaboration for the benefit of residents, visitors and investors. The DSP shall provide management and operational oversight for all OSBA programs and activities.

Section 3.96.080 of the Sacramento City Code authorizes the City Council to contract with an entity for the administration of the BIA's activities if, in the City Council's opinion, the entity (1) is capable of representing the interests of the businesses in the area; (2) has general objectives that are consistent with the purposes of the Chapter; and (3) will provide the resources to effectively achieve those objectives. The City Council finds that the OSBA, with management oversight provided by the DSP, is such an entity.

The OSBA and DSP will collaborate and cooperate with the Historic Old Sacramento Foundation (HOSF), the City, the State, and other Old Sacramento stakeholders to develop, manage, and promote a single vision for Old Sacramento and align all activities with that vision in order to create a comprehensive, integrated, and quality program for the OSBA.

NOW, THEREFORE, the Parties agree as follows:

1. **Agreement Term.** The term of this Agreement shall commence on January 1, 2013 and end on June 30, 2015, unless sooner terminated as set forth in this Agreement. The Parties may extend the term of the Agreement for up to two additional two-year terms upon the mutual consent of the Parties.
2. **BIA Administration and Management.** OSBA shall administer the activities identified in section 3.96.030 of the Sacramento City Code within the BIA. The DSP shall provide managerial and programmatic oversight of the OSBA with respect to its administration of these BIA activities. The OSBA and the DSP also agree as follows:
  - A. Management and Oversight. ~~The DSP shall oversee the management of the BIA services, except those services reserved by the City, and shall be charged with the day-to-day operations of the BIA.~~ Annual BIA work plans and budgets shall be developed by the DSP in cooperation with and approval from the OSBA Board of Directors.
  - B. Annual Program. The OSBA and DSP shall participate in collaborative efforts with the HOSF, the City, the State, property owners, merchants, and other Old Sacramento stakeholders to develop and implement a cohesive marketing and promotional program including advertising, special promotions, special events, historic activities, and public information to bring residents and visitors alike to the Old Sacramento Historic District (the "OSHD").
  - C. Advocacy and Economic Development. The OSBA with DSP management and oversight shall be responsible for:
    - (1) Advocating for OSHD issues and leveraging funds for capital improvements.
    - (2) Leveraging relationships with the City of Sacramento, State of California, and other stakeholders to facilitate continued improvements to OSHD infrastructure and programs.
    - (3) Business outreach, development, and assistance programs.
  - D. Marketing and Promotional Program. The OSBA with DSP management and oversight shall be responsible for marketing and promotional activities which may include:

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- (1) Advertising and marketing, including coordinated joint/cooperative marketing opportunities for businesses in the OSHD.
- (2) Participation in the visitor guide produced by the Sacramento Visitors and Convention Bureau and other tourism publication(s).
- (3) Creation and distribution of business directories, brochures, rack cards, and other marketing publications for the OSHD.
- (4) Creation and installation of banners, bunting, and other street decorations (and maintenance thereof) for OSBA events.
- (5) Presentation of special events to promote OSHD businesses.

E. Web site development and maintenance. Although the [www.oldsacramento.com](http://www.oldsacramento.com) web site is a cooperative effort between the OSBA, the HOSF, and the City, the OSBA/DSP shall have primary responsibility for development, maintenance, and management of the [www.oldsacramento.com](http://www.oldsacramento.com) web site. The OSBA/DSP shall work with the HOSF and the City to develop a cohesive, professional, and integrated Internet presence for all OSHD programs and activities.

- (1) The OSBA/DSP shall collaborate with the HOSF and the City to establish an annual plan for development and maintenance of the [www.oldsacramento.com](http://www.oldsacramento.com) web site content that distributes development and maintenance duties among the three agencies to ensure a cohesive, professional, and integrated internet presence for all OSHD programs and activities.
- (2) The [www.oldsacramento.com](http://www.oldsacramento.com) is a City-owned web site. Upon prior consultation and collaboration with the OSBA/DSP, the Director of the Convention, Culture, and Leisure Department shall have the discretion to re-assume sole control over the site.

3. **Procedures and Standards for BIA Administration.** Each fiscal year (July 1 through June 30) while this Agreement is in effect, the following procedures and standards shall govern the OSBA's administration of the BIA:

- A. Estimate of Assessment Receipts. By May 15 of each fiscal year, the City will provide the OSBA/DSP with a written estimate of assessment revenues anticipated to be collected within the BIA during the immediately following fiscal year.
- B. Report of Planned Activities. Upon request by the City and no later than June 15 of each fiscal year, the OSBA and the DSP shall submit to the City a written report ("Report of Planned Activities"), based on the estimate of BIA assessment receipts provided under subsection 3(A) and the City

funds described in section 4 below, that describes in general terms the planned activities, and the proposed expenditures for those activities, for the immediately following fiscal year. The Report of Planned Activities shall include the activities and programs listed in section 2 of this Agreement. The City Council will review the report as soon as practicable and, in its sole discretion and within the scope of BIA authorized activities, may revise the planned activities and expenditures.

C. Implementation of Approved Report. The OSBA and the DSP shall use their best efforts to implement the activities described in the Council-approved Report of Planned Activities for the benefit of the BIA and all businesses paying the assessment.

D. Collection of Assessments. In accordance with BIA Law, the City will collect the assessments from businesses within the BIA at the same time and in the same manner as it collects the general business operations tax. The City will deposit the assessments in a special fund designated as the "Old Sacramento Business Improvement Area Fund."

E. Disbursement of BIA funds. Funds collected by the City from businesses within the BIA will be disbursed to the OSBA/DSP monthly in the month following the month of collection.

F. End-of-Year Report. By September 30 of each year, the OSBA and the DSP shall submit to the City a report describing in general terms the OSBA's actual activities and expenditures during the immediately preceding fiscal year.

4. **Funding from the City.** The City shall provide up to \$37,000 or such other amount as approved by the City Manager and adopted by the City Council annually to the OSBA/DSP to augment the BIA assessment revenues for the purpose of promoting and enhancing the OSHD. These funds shall be provided as follows:

A. Base funding of \$37,000 by August 1 of each year.

(1) This funding may, at the sole discretion of the Director of Convention, Culture, and Leisure, be reduced by the same percentage reduction imposed on the Old Sacramento Management Division general fund budget for the same fiscal year.

(2) This funding shall be prorated for the remainder of the FY12-13 fiscal year.

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- (3) OSBA may annually submit a list of priority projects or programs for the City's consideration to be included within the Old Sacramento Management Division operating and capital budgets.
5. **Membership.** Membership in the OSBA is open to any business within the OSBIA that pays the Assessment, and the OSBA's rules and regulations regarding membership shall be reasonable.
6. **Board of Directors.** A majority of the OSBA Board members shall be private business owners who pay OSBIA Assessments. The number of members, term of office, and method of filling vacancies for the OSBA Board shall be consistent with the OSBA bylaws and the Board shall include, at a minimum, the following voting members:
- Six (6) Old Sacramento retail business owners;
  - Two (2) Old Sacramento non-retail tenants;
  - One (1) Old Sacramento property owner;
  - One (1) representative from the Downtown Sacramento Partnership;
  - One (1) representative from the HOSF
  - One (1) representative from the City of Sacramento;
  - One (1) representative from the Sacramento Convention and Visitors Bureau; and
  - Two (2) at-large members.
7. **Meetings.** The OSBA shall hold at least one meeting each year to consider the proposed BIA budget and the activities covered by the budget. This meeting must be open to representatives of all businesses that pay the Assessment.
8. **Books and Records.** The OSBA and DSP shall maintain all necessary books and records related to their performance under this Agreement and shall make them available for audit at all reasonable times by the City's Director of Finance or his or her designated representatives.
9. **Subcontracts.** The OSBA and the DSP may award and administer all subcontracts necessary for providing the activities authorized herein. When awarding a subcontract for \$25,000 or more, the OSBA and the DSP shall (1) solicit bids for the work; (2) consider the bids received before awarding the subcontract; and (3) make a written "Bid Record" after the subcontract is awarded (the Bid Record must list the name and amount bid for each bidder and describe the reasons for awarding the subcontract to the successful bidder). For

any subcontract, upon request, the OSBA and the DSP shall provide the City with a copy of the subcontract and the Bid Record.

10. **Compliance with Laws.** The OSBA and the DSP shall comply with all federal, state, and local laws, including but not limited to BIA Law and Sacramento City Code Chapter 3.96. In addition, the OSBA and the DSP shall secure all necessary permits and authorizations for work on public property or within public right-of-ways such as sidewalks, alleys, streets, pedestrian malls, public easements, public buildings, and public-parking areas.

- A. Special Event Permits. The OSBA shall apply for and obtain Special Event Permits from the City and adhere to all requirements associated with such permits prior to conducting any type of event or activity on City-owned public space in the OSHD. The City will not reasonably withhold issuance of a Special Event Permit and will expedite review and approval of OSBA Special Event Permit applications whenever possible.

11. **Indemnity.**

- A. Indemnity: OSBA and DSP 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 OSBA or DSP, 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 damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.

- 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 11, nor shall the limits of such insurance limit the liability of OSBA or DSP hereunder. The provisions of this section 11 shall survive any expiration or

termination of this Agreement.

12. **Insurance.** The OSBA and the DSP shall maintain in force while this Agreement is in effect, at their sole cost, insurance policies that meet the following requirements:

It is understood and agreed by the OSBA and the DSP that their liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by OSBA and the DSP 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 OSBA and the DSP.

No automobile liability insurance shall be required if OSBA and the DSP complete the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement."  
\_\_\_\_\_ (OSBA and DSP 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:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the OSBA and the DSP.

No Workers' Compensation insurance shall be required if OSBA and the DSP complete 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." \_\_\_\_\_  
(OSBA and DSP initials)

- (4) Event Insurance. The OSBA and the DSP shall obtain special event insurance as required by the City's special event permits.

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 the OSBA or the DSP, products and completed operations of the OSBA or the DSP, and premises owned, leased or used by the OSBA or the DSP. 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:

\_\_\_\_\_ 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) OSBA's and the DSP'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 the OSBA's and the DSP'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 the OSBA's and the DSP'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 8 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) OSBA and the DSP shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the Old Sacramento Division, 1111 Second Street, 3<sup>rd</sup> floor, Sacramento, CA 95814. 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 the OSBA or the DSP and/or cancel the Agreement if the insurance is canceled or OSBA or the DSP otherwise ceases to be insured as required herein.

13. **General Fund.** Neither the general fund nor any other fund or monies of the City other than actual Assessment revenues may be used for the payment of any obligations related to this Agreement. Such obligations are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of OSBA's and the DSP's rights to be compensated for administering and

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managing the BIA, and the City is not required to execute any additional note or document.

14. **Notices.** All notices and orders that may be given under this Agreement may be served by first class mail or in person to City at the Old Sacramento Historic District Office, 922 Second Street, Suite 200, Sacramento, California 95814; and to OSBA in C/O the Downtown Sacramento Partnership, 980 9<sup>th</sup> Street, Suite 400, Sacramento, California 95814, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.
15. **Termination.** This Agreement remains in effect until June 30, 2015, unless sooner terminated as follows:
  - A. Any Party may terminate this Agreement, for any reason or no reason, by giving the other Parties at least 60 days' advance written notice. The City Manager is authorized to act for the City under this section 15.
  - B. The City may terminate this Agreement if it determines that the OSBA or the DSP has materially breached this Agreement and has failed to cure the breach within 30 days after receiving the City's written demand for cure.
  - C. The City may terminate this Agreement immediately by giving the OSBA and the DSP written notice if it determines that the OSBA or the DSP has misappropriated funds, committed malfeasance or misfeasance, or violated any law in relation to the BIA. As of the termination date, the OSBA and the DSP shall cease all of their activities related to the BIA. Following the termination date, the OSBA and the DSP shall, as expeditiously as is reasonably possible, pay all obligations and administration costs incurred in relation to the BIA, and return to the City all remaining BIA funds and all assets acquired with BIA funds.
16. **Non-Discrimination.** OSBA and the DSP agree that they shall not discriminate against any person on account their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in violation of the Fair Employment and Housing or the Unruh Civil Rights Acts. Upon a final determination by a court of competent jurisdiction that the OSBA and/or the DSP has violated either of these Acts, the City may, at its option, deem this Agreement void.
18. **Interpretation and Venue.** Time is of the essence of this Agreement, which is to be interpreted and applied in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court.

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19. **Waiver.** A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party or Parties' breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A Party's waiver of the other Party or Parties' breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving Party.
20. **Assignment Prohibited.** The expertise and experience of OSBA and the DSP 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 OSBA and the DSP under this Agreement. In recognition of this interest, OSBA and the DSP 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.
21. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 19, above.
22. **Entire Agreement.** This Agreement sets forth the Parties' entire understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied), including City Agreement 2008-0178 and any amendments and supplements thereto, and may be modified only by another written agreement signed by all Parties.
23. **Nondiscrimination.** OSBA and DSP shall not discriminate against any employee, applicant for employment, or patron on the basis of race, color, religion, disability, ancestry, gender, sexual orientation, national origin, age, or any other basis protected by law. OSBA and DSP will provide equal employment opportunities to ensure that applicants are employed, and that employees are treated during employment without regard to their protected basis. Such opportunities shall exist with regard to, but not limited by, the following actions; employment, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. OSBA and DSP shall post in conspicuous places, available to employees and applicants, notices setting forth the provision of this paragraph.
24. **Nondiscrimination 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 A. OSBA and DSP are required to

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sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

25. **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.
26. **OSBA/DSP Authority.** The persons signing this Agreement for OSBA and the DSP hereby represent and warrant that he or she are fully authorized to sign this Agreement on behalf of OSBA and the DSP and to bind OSBA and the DSP to the performance of their obligations hereunder.
27. **City Representative Authority.** Authority to act on behalf of the City in the administration of this Agreement, including exercising any extension of this Agreement, is hereby delegated to the City Manager or his or her designee.

Old Sacramento BIA Agreement

CITY OF SACRAMENTO

\_\_\_\_\_  
John F. Shirey, City Manager    Date

APPROVED AS TO FORM

Kenneth C. Boudick 11/19/12  
Deputy City Attorney    Date

ATTEST

\_\_\_\_\_  
City Clerk    Date

OLD SACRAMENTO BUSINESS ASSOCIATION

Howard Skalet 11/15/12  
Howard Skalet, Chair    Date  
Howard Skalet  
Name  
OSBA Chair  
Title

DOWNTOWN SACRAMENTO PARTNERSHIP

Michael Auer 11/15/12  
Signature    Date  
Michael Auer  
Name  
Executive Director  
Title

EXHIBIT A

DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance

Name of Contractor: Old Sacramento Business Association

Address: 980 9th Street #400, Sacramento, CA 95814

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.

## *Old Sacramento BIA Agreement*

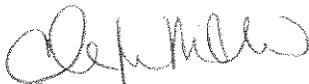
- c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
  - e. If Contractor submits written evidence of making reasonable 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

*Old Sacramento BIA Agreement*

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.

 11/15/12  
Signature of Authorized Representative Date

Christopher McSwain  
Print Name

Business District Manager  
Title

## **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

## *Old Sacramento BIA Agreement*

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.

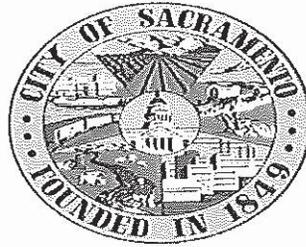
### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(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 directly 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 11/15/12 (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 benefits
- Membership or membership discounts
- Any other benefits given to employees
- Moving expenses
- Pension and retirement
- Health benefits - Vacation
- Travel benefits

(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,

*Old Sacramento BIA Agreement*

**You May . . .**

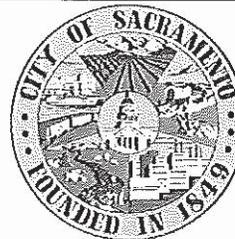
- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Procurement Services Division  
5730 24<sup>th</sup> 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 - Moving expenses
- Disability, life and other types of insurance- Pension and retirement benefits
- Family medical leave - Vacation
- Health benefits - Travel benefits
- Membership or membership discounts- 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 24<sup>th</sup> 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

POLICY NUMBER: CPS1549380

COMMERCIAL GENERAL LIABILITY  
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
CITY OF SACRAMENTO OLD SACRAMENTO DIVISION C/O EBIX BFO P.O. BOX 257 PORTLAND, MI 48875-0257
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

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Page 1 of 1

11/15/2012 8:00AM



# CERTIFICATE OF LIABILITY INSURANCE

OLDSA-1 OP ID: SC

DATE (MM/DD/YYYY)  
11/01/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arroyo Insurance Services P. O. Box 41498 Los Angeles, CA 90041-0498 Robert Knaut	323-550-7900 323-256-0800	<b>CONTACT NAME:</b> PHONE (Area No., Ext): FAX (Area No.): EMAIL ADDRESS: ADDRESS:	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Scottsdale Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	IAC # 41297
<b>INSURED</b> Old Sacramento Business Association 980 9th Street Sacramento, CA 95814				

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

EXCL. LTR.	TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFFECT DATE	POLICY EXPIRATION DATE	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> LANGUAGE <input checked="" type="checkbox"/> COVERED <input type="checkbox"/> CONTRACTOR POLLUTION AND ENVIRONMENTAL <input type="checkbox"/> POLLUTION <input type="checkbox"/> FES <input type="checkbox"/> LOC	X	CPS1549380	03/01/12	03/01/13	EACH OCCURRENCE \$ 1,000,000 DEDUCTIBLE TO PERMITTED (PER POLICY) Excluded MEDICAL EXPENSE PER PERSON Excluded FEDERAL & PROV. POLICY \$ 1,000,000 FEDERAL AND PROV. GATE \$ 2,000,000 FEDERAL AND PROV. GATE \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRE/AUTOS <input type="checkbox"/> DIRECTED AUTOS <input type="checkbox"/> UNLICENSED AUTOS					CONTRACTOR POLLUTION AND ENVIRONMENTAL BODILY INJURY (PERSONAL) BODILY INJURY (NON-PERSONAL) PROPERTY DAMAGE (PERSONAL) PROPERTY DAMAGE (NON-PERSONAL)
	<b>UMBRELLA LUB</b> EXCESS LUB <input type="checkbox"/> COV. <input type="checkbox"/> FES/LOC					EACH OCCURRENCE ANNUAL
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> AND FEDERAL/STATE REQUIREMENTS (MANDATORY IN ILL.) YES <input type="checkbox"/> NO <input type="checkbox"/> N/A	Y/N				FEDERAL/STATE REQUIREMENTS FEDERAL/STATE REQUIREMENTS FEDERAL/STATE REQUIREMENTS FEDERAL/STATE REQUIREMENTS

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Certificate Holder is named as additional insured as respects operations of the named insured. Waiver of Subrogation applies.

<b>CERTIFICATE HOLDER</b> SACR-03 City of Sacramento Old Sacramento Division c/o EBIX BPO P.O. Box 257 Portland, MI 48075-0257	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

ACORD 25 (2010/05)      © 1999-2010 ACORD CORPORATION. All rights reserved.      The ACORD name and logo are registered marks of ACORD  
 11/15/2012 8:00AM



# City of Sacramento

Tax ID # if applicable:

Requires Council Approval:  No  YES Meeting: 11/27/12

Real Estate  Other Party Signature Needed  Recording Requested

## General Information

Type: Select Contract Type	PO Type: Select PO Type	Attachment: Original No.:
\$ Not to Exceed: \$ 50,000		Original Doc Number:
Other Party: Historic Old Sacramento Foundation		Certified Copies of Document::
Project Name:		Deed: <input type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number:	Bid Transaction #:	E/SBE-DBE-M/WBE:

## Department Information

Department: CCL Division: Admin  
 Project Mgr: Barbara Bonebrake Supervisor: Barbara Bonebrake  
 Contract Services: Date: Division Mgr: Barbara Bonebrake  
 Phone Number: x 7733 Org Number: 17000  
 Comment:

## Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		
Accounting:		
Contract Services:		
Supervisor:		
Division Manager:		

City Attorney	Signature or Initial	Date
City Attorney:	KCB	11/19/12

Send Interoffice Mail  Notify for Pick Up

Authorization	Signature or Initial	Date
Choose Director Department Director:		
City Mgr: yes <input type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

<b>For City Clerk Processing</b>	
<b>Finalized:</b>	
Initial:	
Date:	
<b>Imaged:</b>	
Initial:	
Date:	
<b>Received:</b> (City Clerk Stamp Here)	

# HISTORIC OLD SACRAMENTO FOUNDATION AGREEMENT

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**AGREEMENT  
BETWEEN THE CITY OF SACRAMENTO AND  
THE HISTORIC OLD SACRAMENTO  
FOUNDATION, INC.**

This agreement ("Agreement") is made as of \_\_\_\_\_ by and between the City of Sacramento, a municipal corporation, (the "City") and the Historic Old Sacramento Foundation, a California nonprofit public benefit corporation ("HOSF"). The City and HOSF may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

**RECITALS**

- A. The Old Sacramento Historic District ("District" or "OSHD") is a National Historic Landmark that should be protected and preserved for future generations to enjoy. The District is recognized as a key destination for local residents as well as visitors to the area. A successful program of historic education, interpretation, and preservation activities is critical to the economic vitality of the District. A key component of this program is the City's Sacramento History Museum, whose mission is to explore, interpret, and display the region's history from the days before the Gold Rush to the present.
- B. HOSF was established to improve the District as a local, regional, and national historic and cultural asset by preserving and protecting the historic district and conducting successful interpretive, historical, and entertainment programs that contribute to the economic vitality of the District and region.
- C. The City would like to continue its relationship with HOSF to preserve, protect, and enhance the District and the Museum. To this end, HOSF will collaborate and cooperate with the Downtown Sacramento Partnership ("DSP"), the Old Sacramento Business Association ("OSBA"), the Center for Sacramento History (CSH), the City, State, and other Old Sacramento stakeholders to develop, manage, and promote a single vision for Old Sacramento and align all activities with that vision in order to create a comprehensive, integrated, and quality program for the OSHD.
- D. The City and County intend to continue contributing funds and resources for the operation of the Sacramento History Museum. The City is committed to ensuring the District's and the Sacramento History Museum's success. To that end, the City desires to work with HOSF to preserve, protect and enhance the District and Museum.

NOW, THEREFORE, the Parties agree as follows:

**Section 1. Term.**

The term of the Agreement shall commence on January 1, 2013 and end June 30, 2017, unless sooner terminated as set forth in this Agreement. The Parties may extend the term of this Agreement for one additional five-year term upon the mutual consent of the Parties.

**Section 2. HOSF Provided Services and Obligations.**

**A. Programs and Services**

In cooperation with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders, HOSF shall develop, coordinate, and implement a full range of high quality programs, events, and activities to preserve and protect the OSHD and conduct successful educational, interpretive, historical, and entertainment programs, including:

1. Interpretive Programs including but not limited to the Living History Program described in Section 2(C);
2. Regular walking tours of Old Sacramento;
3. "Underground Tours," which are specialized guided tours open to the public that explore the District's underground and hollow sidewalks;
4. Commemoration, interpretation, and re-enactments of historical events to draw a culturally diverse local and tourist audience;
5. Re-enactors for street scenes, craft demonstrations, and public relations with Old Sacramento guests;
6. Youth and school programs, including an annual History Camp or other concept events and activities;
7. Historic education and interpretive activities, such as interpretive signage, self-guided tour materials, brochures, and other interpretive documents;
8. Promotion of Old Sacramento Historic District as a place to learn history;
9. Advice and support for Old Sacramento businesses regarding historic displays, furnishings, and other activities; and
10. Items may be developed by HOSF for sponsorship, publication, purchase, distribution, sale or other purposes consistent with this agreement. Such items may include publications, maps, literature, illustrative materials, plans, designs, exhibits, media, and other educational and interpretive materials and services that

increase visitor understanding and appreciation of the Old Sacramento Historic District. Such items are subject to City approval and the conditions related to applicable licenses.

11. OSHD advocacy and promotion and enhance the historical integrity of the District as a National Historic Landmark.

B. Operation of the Sacramento History Museum

1. Except as stated in Section 5(A), (B), and (C), HOSF shall pay all History Museum operating costs, including insurance as described in Section 13, materials and supplies, equipment, staffing, and fixtures necessary for the programming, exhibits, maintenance and operation of the Facility.
2. HOSF shall be responsible for the management of the Facility including, but not limited to, hiring and supervising of History Museum paid staff, supervising volunteer staff, and financial planning within available funding resources.
3. HOSF shall provide day to day management of the Facility, except as stated in Section 5(A) below, including but not limited to, exhibit design and development, maintenance and repair, janitorial, lighting, fencing, landscaping, signage, and security services for the Facility to meet museum quality standards as approved by the Director of Convention, Culture and Leisure Department.
4. HOSF shall, at its sole cost and expense, except as stated in Section 5(C), keep and maintain in good order and repair and safe condition the whole of the Facilities designated in Exhibit A, including improvements and landscaping, in a clean, sanitary, orderly, and attractive condition. Landscaping shall be in keeping with the environmental setting of the Facility's location in the Old Sacramento Historic District. If HOSF determines that operating funds are not sufficient to operate the Facility to standards acceptable to the City, the Facility shall be surrendered to the City.
5. HOSF shall provide storage for its exhibits and all other storage needs, excluding City collections. City may in its sole discretion provide limited storage at the Center for Sacramento History.
6. HOSF shall designate a position responsible for the daily operations of the Facility and shall consult the City's Director of Convention, Culture and Leisure Department prior to such appointment.
7. HOSF shall set, after consultation with the Director of Convention, Culture and Leisure Department, general admission fees and operational hours for the History Museum.

8. HOSF, in operating the History Museum, shall adhere to the "Characteristics of an Accreditable Museum" as approved by the American Alliance of Museums ("AAM") and approved by the Accreditation Commission on December 3, 2004.
9. HOSF shall, when borrowing artifacts from the Center for Sacramento History (CSH) or from other lenders, meet national museum standards for the care and handling of historic materials, including, but not limited to the following:
  - a. At all times, History Museum and HOSF staff members shall be aware of their responsibilities to preserve and protect artifacts.
  - b. Artifacts, whether on display or in storage, must be adequately protected against fire, theft, vandalism and natural disaster, as well as harmful light, temperature extremes, humidity, and dirt.
  - c. HOSF shall maintain a monthly cleaning schedule for all items on display at the History Museum.
  - d. Only professional paid staff, its trained volunteer staff under the supervision of professional paid staff, or professional staff from artifact lenders shall handle artifacts in accordance with the standards established by the American Alliance of Museums.
  - e. HOSF must have established procedures for handling emergency situations and must provide proper environmental conditions and protections related to exposure from natural light, interior lighting, temperature, humidity, pests and the general public.
  - f. No artifact shall be brought into the museum without a written record describing the artifact, its accession number or loan agreement, condition and estimated value. Such records shall be retained on-site and a copy shall be retained off-site.
  - g. HOSF shall maintain accurate records on all loaned materials on display in the History Museum or being held for future display.
  - h. The City-County collections managed by the Center for Sacramento History is the primary source of displayed material. As such, all material displayed, or held for display, shall be first approved by the City.
10. HOSF shall be responsible for the safekeeping of all artifacts loaned to HOSF. If any artifacts are determined by the Center for Sacramento History to be in a deteriorating condition or in danger while on display, HOSF must, upon written

notice by the Center for Sacramento History, correct the situation to the satisfaction of the Center for Sacramento History or the items shall be removed from exhibition and returned to lender.

11. HOSF shall accept and abide by all conditions required by the terms of any loan agreement or insurance instruction that governs any artifact held by the Center for Sacramento History.
12. HOSF shall provide to the Director of Convention, Culture and Leisure Department an adopted annual budget by October 1st of each year. The budget shall provide for expenditures of an amount no less than the combined total amount budgeted for HOSF by the City and the County for the museum operations for the fiscal year which commenced the preceding July 1<sup>st</sup>.  
  
HOSF shall be responsible for the operation of History Museum programs and, if applicable, museum store.
13. HOSF shall not engage in any other business or activity at the Facility not authorized under this Agreement without the prior written consent of the Director of Convention, Culture and Leisure Department.
14. HOSF shall prepare a Standard Facility Report – United States, Registrars Committee of the American Alliance of Museums, Adopted 1998, and submit the report to the Director of Convention, Culture and Leisure Department prior to occupancy.
15. HOSF is a 501(c)(3) public benefit corporation and shall maintain its nonprofit status throughout the term of this contract for the purpose of operating the History Museum.
16. In light of similar purpose and goals, HOSF shall explore the opportunity to consolidate and/or develop a formal relationship with the Sacramento History Foundation, a non-profit corporation, within the first 18 months of this agreement.
17. HOSF shall pursue a goal to achieve accreditation by the Association of Museums by December 31, 2016.
18. The History Museum shall be used as a museum depicting history to be open to the public for a minimum of thirty (30) hours per week, unless a legal holiday falls within the scheduled 30 hours per week, and may be used for facility rentals for fundraising purposes with prior written approval from the Director of Convention, Culture and Leisure Department.

C. Interpretive Programs and Living History Programs

HOSF shall operate and manage the Old Sacramento Living History Program and other interpretive programs and shall:

1. Employ an Interpretive Living History Program Coordinator to supervise, direct, and manage all aspects of the Interpretive Living History Program;
2. Develop a program of characterization of historic persons important in early Sacramento during the gold rush and post gold rush periods;
3. Include in the characterization persons representing certain businesses, trades, occupations, etc. present in early Sacramento;
4. Develop a program of proper costuming as part of the portrayal of the persons in numbers 2 and 3 above. Maintain costume closets and 1850s reproductions of household items, structures, and possessions;
5. Develop an outreach program for the enrollment of volunteers to implement the Living History program;
6. Attend special events and historic activities in the OSHD and throughout the greater Sacramento region in costume to promote the OSHD;
7. Develop a History Center facility or expand use of the Sacramento History Museum with the long-term goal of becoming the center of interpretation for the Sacramento Region. As a part of this program, HOSF shall enhance the use of the Sacramento History Museum as an interpretive center for the Old Sacramento Historic District and:
  - a. develop specialty-history curricula for schools.
  - b. create training workshops for docents, re-enactors, and museum educators.
  - c. sponsor workshops for teachers to promote interpretive learning inside the classroom.
  - d. create innovative programs for youths such as history camps, guide training programs, and live interpretation.

D. Outreach and Promotional Program

HOSF shall collaborate with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders to develop and implement a promotional program including outreach, special promotions,

special events, historic activities, and public information to bring residents and visitors alike to the OSHD and assure that once they are in the OSHD there are special historic activities to experience.

1. HOSF shall collaborate with the OSBA, the DSP, and other stakeholders to develop an annual cohesive, integrated, and comprehensive marketing and advertising program for all Old Sacramento programs, events, and activities.
2. HOSF shall be responsible for providing, in a timely manner, Old Sacramento historic information and HOSF program information to the OSBA for inclusion on the [www.oldsacramento.com](http://www.oldsacramento.com) web site, visitor guides or other visitor publications.
3. In cooperation with the OSBA, the DSP, the City, the State, and other Old Sacramento stakeholders, HOSF shall develop interpretive signage, self-guided tour materials, brochures and other interpretive publications and programs as necessary to interpret and promote Sacramento history.

E. Resource Development Program

HOSF shall seek, identify, and develop funding sources for expansion and continuance of Old Sacramento historic education, interpretation, and preservation activities. HOSF shall submit grant proposals and seek sponsorship or collaborative opportunities which will benefit the Old Sacramento Historic District.

F. Annual Budget and Annual Plan

1. HOSF shall adopt an annual line item and program budget that adequately supports HOSF operations and the services described in this Section 2.
2. In cooperation with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders, HOSF shall develop an annual plan for Old Sacramento historic education, interpretive, and preservation programs and activities.
  - a. The annual interpretation and education plan shall include the programs, events, and activities listed in Section 2 as well as other activities that support the mission of HOSF.
  - b. The annual interpretation and education plan shall become part of a comprehensive action plan for all Old Sacramento projects, events, services, and activities to ensure a coordinated, cohesive, and effective Old Sacramento program that maximizes all available resources.

- c. Not later than October 1<sup>st</sup>, an annual interpretation and education plan for at least the next calendar year shall be submitted to the OSBA Board for marketing purposes. HOSF agrees to provide the OSBA Board with regular updates at OSBA Board meetings regarding interpretive and educational programs in the district.

G. Non-profit Status

HOSF shall maintain its 501(c)3 non-profit status as determined by law.

H. Advisory Services

HOSF shall advise the City and OSBA/DSP on issues relevant to Old Sacramento as needed.

I. Facilities, Supplies, and Equipment

HOSF shall provide all facilities, supplies, and equipment necessary for the operations of HOSF except for those items expressly provided by the City as listed in Section 5(B).

J. Other Services and Contracts

1. HOSF shall perform and deliver other services, programs, or items as stipulated in writing between HOSF and the Director of the City's Convention, Culture and Leisure Department.
2. HOSF agrees that it will not enter into any contracts, partnerships, or relationships with any other agency or organization that would in the sole discretion of the City, reasonably conflict with the Foundation's obligations to the City of Sacramento as outlined in this Agreement.

**Section 3. HOSF Board of Directors.**

- A. HOSF agrees that the number of members, term of office, and method of filling vacancies for its Board of Directors ("Board") shall be consistent with its bylaws.
- B. HOSF Board shall include the following voting members:
  1. A volunteer from the Living History or other Interpretive Program;
  2. A representative of the OSBA Board;
  3. A representative from the Sacramento Convention and Visitors Bureau;

4. The City's Director of Convention, Culture and Leisure or his or her representative (to become ex-officio within 18 months);
5. A representative from the California State Railroad Museum (to become ex-officio within 18 months).

HOSF Board shall also appoint other voting and advisory members as needed to ensure appropriate Old Sacramento stakeholder representation.

#### **Section 4. HOSF Performance Measurement and Reporting Requirements.**

HOSF shall provide the following reports to the Director according to the schedule below.

##### **A. Performance Reporting**

1. HOSF shall be responsible for collecting and reporting measures related to HOSF programs and activities, including, but not limited to, the following:
  - a. Number of HOSF members;
  - b. Number of volunteers;
  - c. Number of tours provided in OSHD;
  - d. Number of historic characterizations throughout the greater Sacramento region;
  - e. Number of youth served by educational programs; and
  - f. Dollar value of grants received.
2. HOSF shall provide quarterly status reports with a brief narrative of activities and projects to the City by the end of the month following the end of each quarter.

##### **B. Financial Reporting**

1. HOSF shall provide to the City a proposed operating annual budget by May 1st of each year for the next fiscal year.
2. HOSF shall provide to the City monthly reports indicating expenses and revenues against budget submitted by the 15th of each month for the preceding month.

C. Annual Report

1. HOSF shall provide to the City not later than 120 days after the close of the fiscal year an annual report as described in Section 9.03 of HOSF Bylaws, as amended.

**Section 5. City Provided Services and Funding.**

A. HOSF Executive Director

1. The City of Sacramento Historic District Manager shall serve as Executive Director of HOSF and Museum Director and provide direct supervision and oversight over all HOSF staff, unless the City and HOSF determine hiring an outside executive director is preferable, consistent with Section 5(A)(2). The HOSF Executive Director shall serve as staff to the HOSF Board of Directors who shall work closely with and have an active role in supporting OSBA/DSP Old Sacramento activities and operations.
2. In the event the HOSF Board, in consultation with the City, determines it is feasible and in the best interest of HOSF to recruit and employ a Museum Director and/or HOSF Executive Director in lieu of the City's Historic District Manager fulfilling those roles, the City retains the right to approve the individual. Further, the Museum Director position specifications shall require certain qualifications and experience for professional museum management in accordance with standards promulgated by the American Alliance of Museums.

B. Facilities, Supplies, and Equipment

At the sole discretion of the City's Director of the Convention, Culture and Leisure Department, the City may provide the following support for HOSF operations:

1. Office space for HOSF staff;
2. Living History Center/Interpretive Program space to include offices, meeting rooms, costume storage, and other space necessary for the success of the Living History and Interpretive Program;
3. All computer support necessary for HOSF operations including network support, email, IT support services, hardware and software.

C. Sacramento History Museum Operations

1. City shall provide to the HOSF the use of the property and improvements as identified in Exhibit A hereto, also identified as the Sacramento History Museum ("Facility" or "Facilities").
2. City shall be responsible only for major Facility maintenance in such manner as to equal major maintenance provided at other City facilities. Major maintenance including exterior lighting, roof, exterior and interior painting, doors and windows, HVAC, elevator and escalator maintenance, plumbing, and non-exhibit related electrical.
3. City and HOSF shall jointly conduct an inspection of the Facility at least annually. City shall provide to HOSF a letter specifying any maintenance deficiencies revealed by the inspection.
4. The Center for Sacramento History may serve other museums or institutions. Efforts will be made by the Center for Sacramento History to avoid granting access to other museums detrimental to HOSF access. HOSF shall make no demands upon collections that will restrict public access to public records held by the Center for Sacramento History.
5. The Center for Sacramento History shall permit the HOSF non-exclusive license for reproduction and/or commercial use of collections consistent with the Center for Sacramento History collections policies, deeds of gifts, etc. Each such use of a collection object shall be subject to a prior written Agreement.
6. HOSF is a non-collecting institution. All artifacts that are offered for donation are to be referred to the Center for Sacramento History.
7. The City shall provide Fine Arts Insurance for the History Museum at no cost to HOSF.

D. Compliance with City Policies

HOSF agrees that all employees, volunteers, and agents of HOSF shall abide by all relevant City policies, rules and regulations. HOSF agrees to protect all City Information and treat it as strictly confidential and further agrees that HOSF 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, HOSF 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 HOSF of this subsection 5(D) shall be a material breach of this Agreement.

E. Program Assistance

HOSF shall submit requests for staff support to the Old Sacramento Management Division at least ten (10) business days in advance. The City's Old Sacramento Management Division shall have complete discretion in determining whether to provide staff support to HOSF for programs, events and activities.

F. Funding

1. The City shall provide \$50,000 per City fiscal year to HOSF to perform the services described in this Agreement.
  - a. Funding shall be prorated for fiscal year 2012/2013.
  - b. The City shall disburse funds to HOSF in a lump sum payment by August 1 of each year.
  - c. The total funding per fiscal year may, at the sole discretion of the Director of Convention, Culture and Leisure Department, be reduced by the same percentage reduction imposed on the Old Sacramento Management Division general fund budget for the same fiscal year.
2. Funding for additional services in an amount not to exceed \$100,000 per year may be provided upon written approval of the Director of Convention, Culture and Leisure Department.
  - a. The granting of any additional funds is conditioned upon the Director of Convention, Culture and Leisure Department 's prior written approval of the projects, programs, and activities for which the funds will be expended.
  - b. Additional funds disbursed to HOSF must be used for the express purposes and within the timelines approved by the Director of Convention, Culture and Leisure Department.
3. In addition to the funding described above in Section 5(F)(1) and (2), the City and County annually contribute to the museum operations. Such contribution is determined as part of their respective annual budget process. HOSF shall request annual operating funds from the City and County during the City's and County's annual budget process. There is no guarantee of funding expressed or implied by this section.
4. The City and County, in their discretion, shall make quarterly payments to HOSF for the operation of the Museum Facility, less any expenses incurred by City in support of the Museum Facility not arising from any City obligation under this Agreement. HOSF shall be notified in writing prior to any deduction.

5. HOSF shall have the option to continue the use of the existing water, electric, gas, and telephone services through the City. City shall annually provide the estimated cost of such services to HOSF. Such costs shall be deducted from the City funding pursuant to Section 5(F) above. All service costs shall be adjusted in August for the preceding 12 months. City shall return excess funds over the cost of such services, if any. HOSF shall reimburse City for shortages, if any.

#### **Section 6. Revenue.**

HOSF shall collect and deposit in its account all admission fees, program fees, fund raising revenue, membership fees, gifts/donations, education program fees, and museum store sales for its own benefit and account.

Revenues received from the operation of the Underground Tours shall be pledged to repay City loans, operation and expansion of tours, and to support of the Museum facility.

#### **Section 7. Maintenance and Inspection of Records.**

- A. HOSF shall, at all times during the term of this Agreement and for a period of three years thereafter, keep true, accurate, and complete financial records and accounts of all HOSF operations and such other financial or business records as may be reasonably required by the Director of Convention, Culture and Leisure Department or the Director's designee. The Director of Convention, Culture and Leisure Department or the Director's designee or authorized City representatives shall have the right at all times to examine and audit said records and accounts.
- B. HOSF further agrees to furnish to the Director of Convention, Culture and Leisure Department, within thirty (30) days of the end of each fiscal year, a report detailing total number of visitors, and all gross receipts derived from each and every revenue source, including the program and museum store operations, membership and fundraising for that year.
- C. HOSF shall use a point of sale system acceptable to the Director of Convention, Culture and Leisure Department, through which HOSF shall record all gross sales from the operations of admissions, programs, and museum store. Such system shall be non-resettable and shall supply an accurate recording of all sales on tape and a receipt for each transaction. Hardware shall include a customer display which is visible to the public.
- D. HOSF further agrees to furnish to the City's Convention, Culture and Leisure Department, on or before the fifteenth (15<sup>th</sup>) of December, an audited annual financial statement for the previous fiscal year. These statements must consist of a balance sheet, income and expense statements, and supplemental schedule of gross receipts for the previous fiscal year. The statement must be prepared by a Certified Public Accountant licensed by the State of California on their stationery.

### **Section 8. Subcontracts.**

The HOSF may award and administer all subcontracts necessary for providing the activities authorized herein. When awarding a subcontract for \$25,000 or more, HOSF shall (1) solicit bids for the work; (2) consider the bids received before awarding the subcontract; and (3) make a written "Bid Record" after the subcontract is awarded (the Bid Record must list the name and amount bid for each bidder and describe the reasons for awarding the subcontract to the successful bidder). For any subcontract, upon request, HOSF shall provide the City with a copy of the subcontract and the Bid Record.

### **Section 9. Ownership.**

- A. HOSF shall retain ownership of material acquired by HOSF during the term of this Agreement. City shall retain ownership of material and equipment acquired by City during the term of this Agreement.
- B. HOSF will work with Center for Sacramento History (CSH) regarding City acceptance of artifacts to ensure consistency with CSH collection policies and procedures. The artifacts accepted by the City shall be the property of City and subject to the collection policies and procedures of CSH. HOSF is a non-collecting organization.
- C. City shall permit HOSF's use of the assets, property, office equipment, office furniture, and store equipment described in Exhibit B. City shall not be required to replace assets listed in Exhibit B when they are depleted. HOSF shall return all assets listed in Exhibit B, except for those depleted, upon termination of this Agreement.

### **Section 10. Terms and Conditions Applicable to Construction of Improvements.**

- A. HOSF acknowledges that it has fully inspected the Facility and accepts the same and the improvements thereon in their existing condition and agrees that no demands for any alterations, additions, or repairs are to be made upon the City except in accordance with this Agreement.
- B. HOSF shall submit the design of all proposed improvements and renovations to the Director of Convention, Culture and Leisure Department for approval in advance of any work. All submissions shall be sufficient in detail to enable the Director of Convention, Culture and Leisure Department, or Director's designee, to make an informed judgment concerning the quality of the contemplated improvements and renovations. Such approval shall not be unreasonably withheld.
- C. City's approval of plans pursuant to the foregoing shall not constitute approval of such plans in any manner except as required by this Agreement. HOSF shall obtain building permits for all tenant improvements if applicable and shall comply with all laws and regulations applicable to such improvements including, but not limited to, building codes, fire codes, the Americans with Disabilities Act ("ADA"), CEQA, and zoning.

HOSF shall assume all fees and charges levied in connection with the issuance of building permits.

- D. HOSF shall provide to the City an enumeration of improvements to the Facilities and the equipment and fixtures to be installed, including the installed cost of improvements, fixtures, and equipment. For all equipment, HOSF shall provide a detailed listing of the equipment name, model, manufacturer, and specification sheet for approval. The City shall work closely with HOSF to accomplish the mutually described objectives of the improvements to the Facility. The City retains the right to reject specific pieces of equipment or design if deemed necessary to comply with the working drawings, specifications, and environmental assessment for the Facility.
- E. HOSF shall give written notice to the City at least fourteen (14) days before any materials or services of any type are delivered to or at the Facilities for any purpose for which a mechanic's or material man's, contractor's, or subcontractor's lien may attach to the premises so as to enable City to post a notice of non-responsibility on the premises.
- F. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by City, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.
- G. HOSF shall pay, or cause to be paid, the total cost and expense of all works of improvement, as that phrase is defined in Mechanics' Lien Law in effect at the place of construction when the work begins. No such payment shall be construed as rent. HOSF shall not suffer or permit to be enforced against the Facility or any part of it any mechanic's material man's, contractor's, or subcontractor's lien arising from any work of improvement however it may arise. However, HOSF may, in good faith and at its own expense, contest the validity of any such asserted lien, claim or demand, provided HOSF has furnished the bond required in California Civil Code section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the premises from the effects of such a lien claim).
- H. HOSF shall defend and indemnify City and County against all liability and loss of any type arising out of work performed at the Facility by HOSF, their officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed or acting on their behalf, together with reasonable attorneys' fees and all costs and expenses incurred by City and County in negotiating, settling, defending, or otherwise protecting against such claims.
- I. Any new improvements placed by HOSF on City-owned property shall become the property of the City upon termination of this Agreement, without the requirement of reimbursement to the HOSF.

- J. After completion of construction of tenant improvements, HOSF shall not make, or suffer to be made, any exterior alterations of the History Museum or any part thereof without the prior written consent of the City.

**Section 11. Taxes and Assessments.**

HOSF shall pay, before delinquency, all lawful taxes, assessments, fees, or charges which at any time may be levied by the State of California, County, City, or any tax or assessment levying body upon any interest in this Agreement, or any possessory right which HOSF may have in or to the Facility or improvements thereon by reason of its use or otherwise, as well as all taxes, assessments, fees, licenses, and charges on goods, merchandise, fixtures, appliances, equipment owned or used by it in or about the Facility. If the County determines that this Agreement creates a possessory interest subject to property taxation, HOSF shall be subject to payment of property taxes levied on the possessory interest by the County.

**Section 12. Indemnity and Hold Harmless.**

- A. Indemnity: HOSF shall fully indemnify and save harmless City and County, their officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by City's or County's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of HOSF, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the City or the County, their officers or employees reviewed, accepted or approved any service or work product performed or provided by HOSF, and whether or not such Liabilities are litigated, settled or reduced to judgment.
- B. Obligation to Defend: HOSF shall, upon City's or County's request, defend at HOSF's sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of HOSF, its subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.
- C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 12, 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 12, nor shall the limits of such insurance limit the liability of HOSF hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

### Section 13. Insurance.

During the term of this Agreement, HOSF shall maintain in full force and effect, at its own cost and expense, the following insurance coverages:

A. Workers' Compensation. Full Workers' Compensation Insurance and Employer's Liability policy, or provide evidence of ability to undertake self-insurance. Workers' Compensation in compliance with California Statutes and Employer's Liability coverage of at least \$1 million per occurrence. In the event HOSF is self-insured, it shall furnish a Certificate of Permission to Self-Insure by the Department of Industrial Relations Administration of Self-Insurance, Sacramento, and evidence of at least \$1 million per occurrence excess Workers' Compensation limit combined with the Self-Insurance, Sacramento, and evidence of at least \$1 million per occurrence excess Workers' Compensation limited combined with the Self-Insurance Retention.

B. General Liability Insurance. HOSF must provide sufficient broad coverage to include:

Comprehensive Auto and General Liability Insurance  
Broad Form Property Damage Liability  
Personal Injury Liability  
Products and Completed Operation Liability  
Contractual Liability  
Liquor Liability  
Directors and Officers Liability  
Property Insurance for owned assets

The amount of the policy shall not be less than \$1 million, Single Limit Per Occurrence, issued by an admitted insurer or insurers as defined by the California Insurance Code, providing that the City of Sacramento and County of Sacramento, its officers, employees, and agents are to be named as "Additional Insureds" under the policy, and the policy shall stipulate that this insurance will operate as Primary Insurance and that no other insurance effected by the City or other Named Insured will be called on to contribute to a loss covered there under.

C. Property Insurance. HOSF shall provide property insurance coverage for all assets of which it retains ownership including collections and exhibits. City shall provide property insurance coverage for all assets of which it retains ownership including collections and exhibits. City may elect to be self-insured.

D. Certificate of Insurance. HOSF will have the City's standard Certificate of Insurance completed and filed with the City's Risk Management Division, 915 I Street, Fourth Floor, Sacramento, California 95814, within fifteen (15) days of the execution of this Agreement and prior to engaging in any operation or activity set forth in this Agreement. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this

Agreement without thirty (30) days written notice to the City prior to the effective date of such cancellation or change in coverage.

- E. Acceptability of Insurer. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.

#### **Section 14. Regulations and Ordinances.**

HOSF shall, at all times, comply with and abide by all pertinent or applicable regulations and ordinances of the City of Sacramento and County of Sacramento and the laws of the State of California and the United States insofar as the same or any of them are applicable and shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.

#### **Section 15. Nondiscrimination.**

HOSF shall not discriminate against any employee, applicant for employment, or patron on the basis of race, color, religion, disability, ancestry, gender, sexual orientation, national origin, age, or any other basis protected by law. HOSF will provide equal employment opportunities to ensure that applicants are employed, and that employees are treated during employment without regard to their protected basis. Such opportunities shall exist with regard to, but not limited by, the following actions; employment, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. HOSF shall post in conspicuous places, available to employees and applicants, notices setting forth the provision of this paragraph.

#### **Section 16. Nondiscrimination 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 Exhibit C. HOSF is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

#### **Section 17. Removal of Property upon Agreement Termination.**

Upon the expiration of the term of this Agreement, or upon the sooner termination of this Agreement as provided herein, HOSF shall within thirty (30) days, remove, at its own expense, its own furniture, furnishings, equipment, inventory, and trade fixtures. It is agreed that City, or City's assignee, during this thirty (30) day period, shall have the first right to purchase the furniture, furnishings, equipment, and trade fixtures of HOSF for the same price that HOSF would be willing to sell the goods to any other person. Should HOSF fail to remove these items within the thirty (30) day period, it shall lose all right, title, and interest in and to the items, and City may elect to keep the same upon the demised premises or to sell, remove, or demolish them.

**Section 18. 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.

**Section 19. Notices.**

All notices and orders that may be given under this Agreement may be served by first class mail or in person to City at Department of Convention, Culture and Leisure, 1030 15<sup>th</sup> Street, Suite 250, Sacramento, California 95814; and to Historic Old Sacramento Foundation, 101 I Street, Sacramento, California 95814, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

**Section 20. Hazardous Materials.**

HOSF shall not use, store, release or otherwise introduce onto the Facility any hazardous material in violation of applicable law. HOSF shall be solely responsible for the complete cost of removal and/or remediation of any hazardous material that is introduced or brought onto the Facility by HOSF, and shall defend and indemnify City, its officers, and employees from and against any claims or other liabilities therefore in accordance with the provisions of Section 12 above. As used in this Section 20, "HOSF" shall mean and include HOSF, its officers, employees or agents.

**Section 21. Waiver.**

The waiver by City or the County of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by HOSF shall in no way impair the right of City or the County to avail itself of subsequent breach thereof.

**Section 22. Enforceability; Choice of Law.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. The titles to the sections of this Agreement are for convenience only and shall have no effect upon the construction or interpretation of any part of this Agreement.

**Section 23. Attorneys' Fees.**

Any Party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing Party in such suit or proceeding shall be entitled to recover from the other Party or Parties reasonable costs and expenses, including attorneys' fees.

**Section 24. Damage and Destruction.**

In the event of the damage or destruction of any substantial portion of the improvements on the Facilities, the City may terminate this Agreement immediately and shall have no obligation to reconstruct or repair the damaged or destroyed improvements. City shall retain the sole option to either repair, reconstruct, or terminate this Agreement irrespective of the degree of damage or destruction.

**Section 25. Assignment.**

HOSF shall not, without the written consent of City, assign, hypothecate, mortgage, grant control of this Agreement or of the business conducted pursuant thereto, or any rights or obligations under this Agreement to any other party, which consent shall not be unreasonably withheld. Any such attempted assignment or granting of control without the written consent of City shall, at the election of City and without notice, render this Agreement null and void and of no further force and effect. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**Section 26. Binding on Successors.**

The covenants and conditions herein contained shall, subject to the provisions of assignment in Section 24 above, apply to and bind the successors, executors, administrators and assigns of all of the Parties hereto.

**Section 27. Condemnation.**

In the event any entity with the power of eminent domain shall take the premises, or any part thereof, actually using the power of eminent domain or negotiating under the threat of the use of the power of eminent domain, then:

- (a) In the event of taking of the entire premises, this Agreement shall be terminated when title passes to the condemner or when possession is obtained by the condemner, whichever shall occur first.
- (b) In the event of taking of less than the entire premises, HOSF shall have the right to terminate this agreement by giving 30 day advance written notice to City.

**Section 28. Termination.**

Any Party may terminate this Agreement without cause upon one hundred eighty (180) days written notice to the other Parties. Any Party may terminate this Agreement with cause upon thirty (30) days written notice to the other Parties. Cause for termination shall be defined as failure to cure any non-compliance with the terms of this Agreement within thirty (30) days after giving written notification of the non-compliance by the terminating Party.

**Section 29. Entire Agreement: Amendment in Writing.**

This Agreement, including the exhibits referenced in this Agreement, supersedes City Agreements 2008-0179 (Agreement Between the City of Sacramento and the Historic Old Sacramento Foundation, Inc.) and 2004-0033 (Historic Old Sacramento Foundation Agreement) as of the commencement date of this Agreement, and is the final, complete and exclusive agreement among the Parties and covers in full each and every agreement of every kind or nature, whatsoever, concerning the subject matter of this Agreement, unless otherwise stated, and all preliminary negotiations and agreements of whatsoever kind or nature, are merged into this Agreement. The City has made no representations or promises whatsoever with respect to the subject matter of this Agreement, except those contained in this Agreement, and no other person, firm or corporation has at any time had any authority from the City to make any representations or promises on behalf of the City, and HOSF expressly agrees that if any such representations or promises have been made by others, HOSF hereby waives all right to rely on any such representations or promises. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement, any statute, law or custom to the contrary notwithstanding. Unless otherwise provided in this Agreement, no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties. This Agreement does not supersede City Agreements 2010-0056 (Agreement between the City of Sacramento and the Historic Old Sacramento Foundation for the Provision of Underground Tours in Old Sacramento), 2010-0057 (Loan Agreement), and 2010-0058 (Promissory Note).

**Section 30. City Representative Authority.**

The City Manager, his designee, and the City's Director of Convention, Culture & Leisure Department (where noted) are authorized to act on behalf of the City pursuant to this Agreement.

**Section 31. Time of Essence.**

Time is expressly declared to be in the essence of this Agreement.

**Section 32. Exhibits.**

All exhibits referred to in this Agreement are hereby incorporated by reference.

**Section 33. Contract Authority.**

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

*(Signature Page Follows)*

**CITY OF SACRAMENTO**

**HISTORIC OLD SACRAMENTO  
FOUNDATION, INC. a non-profit  
corporation**

\_\_\_\_\_  
John F. Shirey, City Manager                      Date

*[Signature]*                      11/19/2012  
\_\_\_\_\_  
President, Board of Directors                      Date

*[Signature]*  
\_\_\_\_\_  
Print Name

**APPROVED AS TO FORM:**

*[Signature]*                      11/19/12  
\_\_\_\_\_  
Deputy City Attorney                      Date

**ATTEST:**

\_\_\_\_\_  
City Clerk                      Date

**EXHIBIT A**

The common street address is 101 I Street, Sacramento, California 95814.

## EXHIBIT B

### HOSF & Museum Assets

#### Museum

<u>Description</u>	Cost/Value
Furniture and Equipment	48,898.00
Shelving for Museum Store	500
American Flag- Large	500
Docent Metal Lockers	1475
<b>Total</b>	<b>51,375.00</b>

#### Machinery & equipment

Laptop Computer	1056
Laptop Computer	1056
Laptop Computer	1056
Credit Card Terminal	292
Sanitaire Upright Vacuum	459
Toshiba e2330c Copier	8351
NSS 17" Floor Scrubber	1242
NSS Bronco We/Dry Vacuum	354
LG47LS5700 Led-LCD HDTV	1133
Westinghouse 40" LED HDTV	421
Westinghouse 40" LED HDTV	421
<b>Total</b>	<b>16,601.00</b>

POS System - Big Hairy Dog	13,942.00
Audio Equipment Underground Tours	\$25,000.00
Quickbooks Premier	400
Exhibition Case	500
video projector	300
<b>Total</b>	<b>40,142.00</b>

#### HOSF / Living History

Video Projector	300
Misc. Props	10,000.00
Swing Machines (2)	200
Body Forms (3)	900
Hammerdrills (3)	450
Rolling tool box and tools	100
Area Rugs (6)	5000
Tables (14)	4000
Chairs (65)	2000
1200 books	1500
Canvas for tents (15)	7500
Flys & poles (8)	3000
Sound Equipment (Ghost Tours)	1000
<b>Total</b>	<b>35,950.00</b>

**Grand Total**                      **103,926.00**

**EXHIBIT C**

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

Name of Contractor: Historic Old Sacramento Foundation

Address: 101 I Street, Sacramento, California 95814

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 Attachment A.
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]* Board Chair  
Signature of Authorized Representative

11/19/2012  
Date

*[Signature]*  
Print Name

Board chair  
Title

## **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 24<sup>th</sup> 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 24<sup>th</sup> 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.