

RESOLUTION NO. 2013-0013

Adopted by the Sacramento City Council

January 15, 2013

RESCINDING SECTION 1 OF RESOLUTION 2012-397 RELATED TO AN AGREEMENT WITH THE SACRAMENTO CONVENTION AND VISITORS BUREAU FOR SPORTS MARKETING SERVICES

Background

- A. On November 20, 2012, the City Council adopted Resolution 2012-397, Section 1 of which authorized the City Manager to enter into an agreement with the Sacramento Convention and Visitors Bureau (SCVB) to provide sports marketing services and event production for the City and County of Sacramento. The County was a planned signatory to that agreement. Since that time, the County has decided not to execute the agreement and chosen instead to pursue a separate agreement with SCVB.
- B. As the County is no longer a party to the agreement approved by the City Council on November 20, 2012, the agreement cannot be executed. The City plans to execute a separate agreement with SCVB for the provision of sports marketing services and event production.

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

Section 1. Section 1 of Resolution 2012-397 is repealed.

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Exhibit A Agreement between the City of Sacramento and the Sacramento Convention & Visitors Bureau

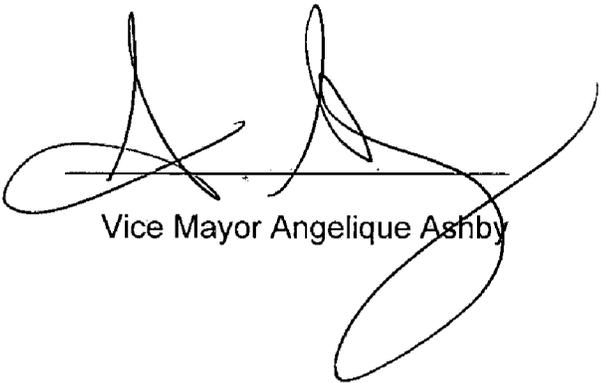
Adopted by the City of Sacramento City Council on January 15, 2013 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, Hansen, McCarty, Pannell, Schenirer, Warren, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Vice Mayor Angelique Ashby

Attest:



Shirley Concolino, City Clerk

Department: Convention, Culture & Leisure
Division: Administration

AGREEMENT FOR SPORTS MARKETING

This Agreement, dated _____, 2013, for purposes of identification only, is between the City of Sacramento, a California municipal corporation (the "City") and the Sacramento Convention and Visitors Bureau (SCVB), a California non-profit mutual benefit corporation ("SCVB"). The City and SCVB may be referred to collectively as "Parties" or in the singular as "Party" as the context requires.

Recitals

- A. SCVB's mission is to strengthen positive awareness of the City and County of Sacramento as a convention and visitor destination, thereby increasing revenues and economic development and growth for the community.
- B. As part of its efforts, the SCVB currently supports and produces multi-day events that include but are not limited to the Sacramento Music Festival (formerly Jazz Jubilee), California Capital Airshow, Sacramento's Wine & Dine Week, Juneteenth, Gold Rush Days and the Amgen Tour of California. In the past, the SCVB has also hosted a variety of multi-day sporting events that include but are not limited to the International Sportsmen's Expo, US Tennis Association West Coast Championships, USA Archery JOAD Nationals/World Championships, NCAA Women's Rowing Championships, Northern California Volleyball Association, Sacramento Gay & Lesbian Gold Rush Softball Tournament, and the Foothill High School Annual Invitational Wrestling Tournament.
- C. The City would like to attract major professional and amateur sporting events to the Sacramento region. SCVB is uniquely positioned to assist the City in this endeavor based on SCVB's experience, proven fiscal stability, organizational depth, and various partnerships it has developed within the Sacramento region.

Based on the facts set forth in the foregoing recitals, the City, and SCVB agree as follows:

- 1. **Agreement Term.** The term of this Agreement shall commence on the Effective Date (as defined in Section 23) and end on June 30, 2022, unless sooner terminated as set forth in this Agreement.
- 2. **Scope of Services ("Services").**
 - a) The SCVB shall work to attract major professional and amateur sporting events to the Sacramento region, and facilitate production of those events, resulting in an economic benefit to the community;
 - b) By September 1 of each year, SCVB will provide the City with a set of goals that reflect the SCVB's sports marketing plan for the upcoming year. The City may suggest amendments to this plan so both parties agree on SCVB's sports marketing objectives for the year; and

- c) By September 1 of each year, SCVB will submit an annual report, for the previous fiscal year ending June 30, to the City that identifies the following:
1. Number and projected economic impact of future SCVB-booked sporting events, including:
 - i. Estimated attendance;
 - ii. Estimated hotel room nights to be booked;
 - iii. Estimated day visitors (if applicable); and
 - iv. Anticipated level of media exposure (i.e. local, regional, national, or international);
 2. Number of, and economic impact of, sporting events hosted by SCVB, for the previous fiscal year, including:
 - i. Event Attendance;
 - ii. Hotel room nights booked;
 - iii. Number of day visitors (if applicable); and
 - iv. Media exposure (local, regional, national, and international); and
 3. Total sports marketing department budget associated with the performance of the Services.

3. Sports Marketing Funding.

a) For performing the services outlined in Section 2 above, the City agrees to pay SCVB the following Annual Funding amounts:

1. Within 45 days of the Effective Date of this Agreement, that amount earmarked for the Sacramento Sports Commission in City Fund 7108 as of the Effective Date of the Agreement less any outstanding expenses of the Sacramento Sports Commission as of December 31, 2012; and
2. By August 1, 2013, and annually thereafter, \$141,600.

b) In consideration for performing the Services, SCVB agrees to pay the City the following amounts by the dates indicated:

<u>Due Date</u>	<u>Amount</u>
May 1, 2013	\$60,000
May 1, 2014	\$85,000
May 1, 2015	\$85,000
May 1, 2016	\$85,000
May 1, 2017	\$85,000

4. Independent Contractor.

a) It is understood and agreed that SCVB (including SCVB's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither SCVB nor SCVB's assigned personnel shall be entitled to any benefits payable to employees of the City. The City is not required to make

any deductions or withholdings from the compensation payable to SCVB under the provisions of this Agreement, and SCVB shall be issued a Form 1099 for its services hereunder. As an independent contractor, SCVB hereby agrees to indemnify and hold the City harmless from any and all claims that may be made against City based upon any contention by any of SCVB's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement.

- b) If, in the performance of this Agreement, any third persons are employed by SCVB, such persons shall be entirely and exclusively under the direction, supervision, and control of SCVB. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by SCVB. It is further understood and agreed that SCVB shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of SCVB's assigned personnel and subcontractors.
 - c) The provisions of this Section 4 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between the City and SCVB. SCVB may represent, perform services for, or be employed by such additional persons or companies as SCVB sees fit provided that SCVB does not violate this Agreement.
5. **Licenses; Permits, Etc.** SCVB represents and warrants that SCVB has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that is legally required for SCVB to practice its profession or provide any services under the Agreement. SCVB represents and warrants that SCVB shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for SCVB to practice its profession or provide such Services.
6. **Time.** SCVB shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of SCVB's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
7. **SCVB Not Agent.** Except as the City may specify in writing, SCVB and SCVB's personnel shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. SCVB and SCVB's personnel shall have no authority, express or implied, to bind the City to any obligations whatsoever.
8. **Conflicts of Interest.** SCVB covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of the City or that would in any way hinder SCVB's performance of Services under this Agreement. SCVB further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of the City. SCVB agrees to avoid conflicts of

interest or the appearance of any conflicts of interest with the interests of the City at all times during the performance of this Agreement. If SCVB is or employs a former officer or employee of the City, SCVB and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any City department, board, commission or committee.

9. **Confidentiality of CITY Information.** During performance of this Agreement, SCVB may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. SCVB agrees to protect all City Information and treat it as strictly confidential and further agrees that SCVB 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 the City. In addition, SCVB 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 SCVB of this Section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

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

11. **Termination.**
 - a) During the first five years of this Agreement, if SCVB breaches, or fails to execute in good faith, any of the terms or conditions of this Agreement, the City may terminate the Agreement.

 - b) After the initial five-year period, the City has the right to terminate this Agreement at any time by giving a 365 day written notice of termination to SCVB. If the City gives such notice of termination, SCVB shall immediately cease rendering Services pursuant to this Agreement. If the City terminates this Agreement:

1. SCVB shall, not later than five days after notice of termination, deliver to City copies of all information, including contracts, contacts, and promotional materials, for booked events and all other contracts (related to the past and future) prepared pursuant to this Agreement.
2. City shall pay SCVB the reasonable value of Services (“Reasonable Value of Services”) rendered by SCVB prior to termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by SCVB had the Agreement not been terminated or had SCVB completed the Services required by this Agreement. The Reasonable Value of Services shall be calculated as follows:
 - i. $\text{Monthly Funding Amount} = \text{Annual Funding (defined in Section 3)}/12$
 - ii. $\text{Reasonable Value of Services} = \text{Monthly Funding Amount} \times \text{Number of Months SCVB Has Performed During Current Year}$

If the City has prepaid the Annual Funding, SCVB shall reimburse the City for that amount pre-paid in excess of the Reasonable Value of Services.

The foregoing is cumulative and does not affect any right or remedy that the City may have in law or equity.

12. Indemnity.

- a) Indemnity: SCVB shall defend, hold harmless and indemnify the 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 the 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 SCVB, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of City, its agents, servants, or independent contractors who are directly responsible to the City, except when such agents, servants, or independent contractors are under the direct supervision and control of SCVB.
- b) Insurance Policies; Intellectual Property Claims: The existence or acceptance by the City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of the City’s rights under this Section 12, nor shall the limits of such insurance limit the liability of SCVB hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

13. **Insurance Requirements.** During the entire term of this Agreement, SCVB shall maintain the insurance coverage described in this Section 13.

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

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

c) 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 SCVB.

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

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (SCVB 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 SCVB.

No Workers' Compensation insurance shall be required if SCVB completes the following certification:

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

4. Professional Liability Insurance providing coverage on a claims-made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars.

d) Additional Insured Coverage

1. Commercial General Liability Insurance: The City, their 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 SCVB, products and completed operations of SCVB, and premises owned, leased or used by SCVB. 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, their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

e) Other Insurance Provisions

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

1. Except for professional liability, SCVB's insurance coverage shall be primary insurance as respects City, their officials, employees and volunteers. Any insurance or self-insurance maintained by City, their officials, employees or volunteers shall be in excess of SCVB'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, their officials, employees or volunteers.
3. Coverage shall state that SCVB'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.

f) 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 13 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

g) Verification of Coverage

1. SCVB shall furnish the City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative named in Section 24 of this Agreement. 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 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 SCVB and/or cancel the Agreement if the insurance is canceled or SCVB otherwise ceases to be insured as required herein.

h) Subcontractors

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

14. Non-Discrimination in Employee Benefits. This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit A. SCVB is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

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

- a) Compliance With Regulations. SCVB shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- b) Nondiscrimination. SCVB, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. SCVB shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- c) Solicitations for Subcontractors, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiations made by SCVB for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by SCVB of SCVB's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- d) Information and Reports. SCVB shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SCVB is in the exclusive possession of another who fails or refuses to furnish this information, SCVB shall so certify to the City, and shall set forth what efforts it has made to obtain the information.
- e) Sanctions for Noncompliance: In the event of noncompliance by SCVB with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as it may determine to be appropriate including, but not limited to:
1. Withholding of payments to SCVB under this Agreement until SCVB complies;
 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.
- f) Incorporation of Provisions: SCVB shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. SCVB shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event SCVB becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, SCVB may request City to enter such litigation to protect the interests of City.
- 16. Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties related to sports marketing and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by SCVB and the City in accordance with the Sacramento City Code.
- 17. 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.
- 18. Waiver.** Neither City acceptance of, or payment for, any Service or Additional Service performed by SCVB, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

19. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
20. **Assignment Prohibited.** The expertise and experience of SCVB are material considerations for this Agreement. City has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on SCVB under this Agreement. In recognition of this interest, SCVB 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 20, above.
22. **Use Tax Requirements.** During the performance of this Agreement, SCVB, for itself, its assignees and successors in interest, agrees as follows:
- a) **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, SCVB and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - b) **Sellers Permit:** For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, SCVB and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. SCVB and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - c) The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.
23. **Effective Date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
24. **Notices and Payments.** Any notice, payment, or refund required under this agreement or by reason of the application of any law will be deemed to have been given by either party when deposited in the U.S. mail, postage prepaid and addressed as follows:

If to SCVB: Sacramento Convention and Visitors Bureau
1608 I Street
Sacramento, CA 95814

If to the City: City of Sacramento
Convention, Culture and Leisure Department
1030 – 15th Street, Suite 250
Sacramento, CA 95814

25. **Counterparts.** The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

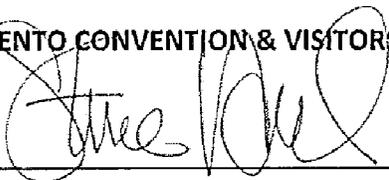
CITY OF SACRAMENTO

By: _____
Signature

Barbara E. Bonebrake, Director of Convention, Culture and Leisure Department
for John F. Shirey, City Manager

Date: _____

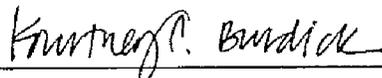
SACRAMENTO CONVENTION & VISITORS BUREAU

By:  _____
Signature

Steve Hammond, President & CEO

Date: 1-8-2013

APPROVED AS TO FORM

 _____
Deputy City Attorney

ATTEST

City Clerk

EXHIBIT A

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: STEVE HAMMOND / SACRAMENTO CVB

Address: 1608 I ST. SACRAMENTO, CA 95814

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

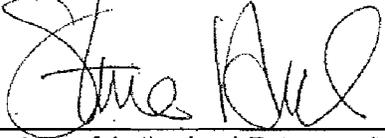
1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached to this Agreement.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that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

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

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

- e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

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



Signature of Authorized Representative

1-8-2013

Date

STEVE HAMMOND

Print Name

PRES & CEO

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 or state law.)

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

You May . . .

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

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

Attachment B



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

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

The included employee benefits are:

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

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

You May . . .

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

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

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

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

You May Also . . .

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

Policy Number: 6601243M296

COMMERCIAL GENERAL LIABILITY

Named Insured: Sacramento Convention & Visitors Bureau

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**NOT-FOR-PROFIT ENTITY AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|--|---|
| <p>A. Not-For-Profit Invitee Property Damage Legal Liability</p> <p>B. Special Event Premium Rating</p> <p>C. Special Event Designated Products</p> <p>D. Malicious Prosecution – Exception To Knowing Violation Of Rights Of Another Exclusion</p> <p>E. Who Is An Insured – Your Liability For Your Conduct Of Unnamed Partnership Or Joint Venture – (Excess Basis)</p> | <p>F. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers</p> <p>G. Blanket Additional Insured – States Or Political Subdivisions – Permits Relating To Premises</p> <p>H. Blanket Additional Insured – States Or Political Subdivisions – Permits Relating To Operations</p> <p>I. Blanket Additional Insured – Persons Or Organizations Where Required By Written Contract Or Agreement</p> |
|--|---|

PROVISIONS**A. NOT-FOR-PROFIT INVITEE PROPERTY DAMAGE LEGAL LIABILITY**

1. The following is added to Exclusion J., Damage To Property, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Paragraph (4) of this exclusion does not apply to "not-for-profit invitee property damage" caused by fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; water; or vandalism or malicious mischief:

- (a) On premises you own or rent or on ways next to premises you own or rent; and
- (b) Because of your operations.

This exception does not apply to "not-for-profit property damage" caused by:

- (i) Rupture, bursting, or operation of any pressure relief device;

(ii) Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or

(iii) Explosion of any steam boiler, steam pipe, steam engine, or steam turbine.

2. The following is added to SECTION III – LIMITS OF INSURANCE:

Subject to Paragraph 5, above, the most we will pay under Coverage A for the sum of all damages because of "not-for-profit property damage" sustained by all "not-for-profit invitees" is \$15,000.

3. The following are added to the DEFINITIONS Section:

"Not-for-profit invitee":

- a. Includes any of your clients, customers, guests, members, patrons, supporters and "volunteer workers".

COMMERCIAL GENERAL LIABILITY

- b. Does not include any person who is your "employee", "temporary worker" or "independent contractor".

"Not-for-profit Invitee property damage" means "property damage" to personal property owned or rented by a "not-for-profit Invitee", other than any of the following property:

- a. Accounts, bills, currency, deeds, money, notes, securities or debt instruments;
- b. Mechanical drawings, blueprints, documents, records, manuscripts or valuable papers; or
- c. Contraband or other property in the course of illegal transportation or trade.

B. SPECIAL EVENT PREMIUM RATING

The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

Special Event Premium Rating

- a. The Not-For-Profit Entity Amendatory Endorsement includes the following:
 - (1) All indoor events with less than 1000 attendees and shorter than 24 hours in duration; and
 - (2) All outdoor events with less than 500 attendees and shorter than 24 hours in duration.
- b. The following events will be rated separately for additional premium:
 - (1) Any event that exceeds the attendees or duration described in a.(1) or a.(2) above;
 - (2) Any parade, fair or carnival; or
 - (3) Any athletic, sporting or motor vehicle event including walks, runs, tournaments, demonstrations, rallies or competitive activities.

C. SPECIAL EVENT DESIGNATED PRODUCTS

1. The following is added to the definition of "products-completed operations hazard" in the DEFINITIONS Section:
Includes all "bodily injury" and "property damage" arising out of your "designated products" on premises you own or rent, on premises used by you for a special event related to your business, or on the ways next to any such premises you own or rent, or use for a special event.

2. The following is added to the DEFINITIONS Section:

"Designated products" means apparel, buttons, CDs, DVDs, tapes, posters, stickers and other similar products used to promote a special event related to your business.

D. MALICIOUS PROSECUTION – EXCEPTION TO KNOWING VIOLATION OF RIGHTS OF ANOTHER EXCLUSION

The following is added to Exclusion a., Knowing Violation Of Rights Of Another, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE B PERSONAL AND ADVERTISING INJURY:

This exclusion does not apply to "personal injury" caused by malicious prosecution.

E. WHO IS AN INSURED – YOUR LIABILITY FOR YOUR CONDUCT OF UNNAMED PARTNERSHIP OR JOINT VENTURE (EXCESS BASIS)

1. The following replaces the last paragraph of SECTION II – WHO IS AN INSURED:

No person or organization is an Insured with respect to the conduct of any current or past partnership, joint venture, limited liability company or trust that is not shown as a Named Insured in the Declarations. This subparagraph does not apply to your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Common Policy Declarations.

2. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, which is available to you for your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Common Policy Declarations and which is issued to such partnership or joint venture.

F. BLANKET ADDITIONAL INSURED - MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you

COMMERCIAL GENERAL LIABILITY

have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense committed, after you have signed and executed that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- (1) The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations for this Coverage Part, whichever are less; and
- (2) Coverage under this provision does not apply to:
 - (a) Any "bodily injury" or "property damage" that occurs, or any "personal injury" or "advertising injury" caused by an offense committed, after such contract or agreement is no longer in effect; or
 - (b) Any "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

G. BLANKET ADDITIONAL INSURED - STATES OR POLITICAL SUBDIVISIONS - PERMITS RELATING TO PREMISES

The following is added to SECTION II - WHO IS AN INSURED:

Any state or political subdivision that has issued a permit in connection with premises owned or occupied by, or rented or loaned to, you is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the existence,

ownership, use, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, street away openings, sidewalk vaults, elevators, street banners or decorations for which that state or political subdivision has issued such permit.

H. BLANKET ADDITIONAL INSURED - STATES OR POLITICAL SUBDIVISIONS - PERMITS RELATING TO OPERATIONS

The following is added to SECTION II - WHO IS AN INSURED:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

Coverage under this provision does not apply to:

1. Any "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
2. Any "bodily injury" or "property damage" included in the "products - completed operations hazard".

I. BLANKET ADDITIONAL INSURED - PERSONS OR ORGANIZATIONS WHERE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

1. Occurs after you have signed and executed that contract or agreement; and
2. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which the written contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The insurance provided to such person or organization where required by written contract or agreement is subject to the following provisions:

- (1) The limits of insurance provided to such insured will be the limits which you agreed to

COMMERCIAL GENERAL LIABILITY

provide in the written contract or agreement, or the limits shown in the Declarations for this Coverage Part, whichever are less;

- (2) If such Insured is an architect, engineer or surveyor, the insurance provided to such Insured does not apply to "bodily injury" or "property damage" arising out of such Insured's providing or failing to provide any professional services, including:
- (a) The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving or failing to prepare or approve, drawings and specifications; and
 - (b) Supervisory or inspection activities performed as part of any related architectural or engineering activities; and

(3) Coverage under this provision does not apply to:

- (a) Any person or organization that has been added as an additional Insured by attachment of an endorsement under this Coverage Part which names such person or organization in the endorsement's schedule;
- (b) Any person or organization who distributes or sells "your product" in the regular course of that person's or organization's business; or
- (c) Any person or organization from whom you have acquired "your product", or any ingredient of, or that contains, "your product".