Meeting Date: **7/19/2016**

Report Type: Consent

Report ID: 2016-00637

City of SACRAMENTO 03

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: Contract for Legal Service for Curtis Park Village Litigation (M16-008)

Location: District 5

Recommendation: Pass a Resolution: 1) establishing I21005400 as the Curtis Village Park Litigation project; 2) authorizing the City Manager to transfer $300,000 from the Development Services Fund (Fund 2016) fund balance to I21005400 for litigation services; and 3) authorizing the City Attorney to execute a contract with Meyers Nave in an amount not-to-exceed $300,000 for litigation assistance with the lawsuit Petrovich Development Co., v. City of Sacramento, et al.

Contact: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department; Brett Witter, Supervising Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Presenter: None

Department: Community Development Dept / Office of the City Attorney
Division: Current Planning
Dept ID: 21001221
Attachments:
1-Description/Analysis
2-Resolution
3-Agreement

City Attorney Review

Approved as to Form
Brett Witter
7/11/2016 2:03:20 PM

Approvals/Acknowledgements

Department Director or Designee: Frances Chong - 6/22/2016 11:57:31 AM

Description/Analysis

Issue Detail: Staff is seeking Council approval to enter into a legal services agreement with Meyers Nave Riback Silver & Wilson, a Professional Law Corporation, in an amount not-to-exceed $300,000 for expenses associated with the litigation entitled Petrovich Development Co. v. City of Sacramento, et al. The lawsuit was brought by Petrovich Development Company asserting that: (1) the City of Sacramento did not adequately respond to a request for records pursuant to the California Public Records Act; and (2) the City Council improperly denied a Conditional Use Permit for a gas station at the Curtis Park Village project.

The City Attorney's Office maintains a pre-approved list of qualified outside counsel available to assist with litigation matters. Meyers Nave Riback Silver & Wilson has been selected as the most qualified firm to strongly represent and defend the City's interest in this lawsuit. This contract amount should cover expenses incurred since the initiation of the lawsuit through and including the decision of the trial court.

It is recommended that the Council authorize the City Manager to transfer $300,000 from the Development Services Fund (Fund 2016) to the Curtis Park Village Litigation project, which will be established as I21005400, and authorize the City Attorney to enter into a contract for legal services with Meyers Nave Riback Silver & Wilson in an amount not-to-exceed $300,000.

Policy Considerations: This funding is required to obtain representation and defense of the City in this litigation.

Economic Impacts: Not applicable.

Environmental Considerations: Contracting for outside legal services is an administrative activity that will not result in direct or indirect physical changes in the environment, and is not a project subject to CEQA review. CEQA Guidelines section 15378 (b) (5).

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: A lawsuit was filed regarding the Curtis Park Village project that will require the assistance of outside legal counsel.

Financial Considerations: Staff is seeking council approval for the transfer of $300,000 from the Development Services Fund to I21005400. There will be no additional impact to the General Fund.

Local Business Enterprise (LBE): Meyers Nave Riback Silver & Wilson is an LBE.

RESOLUTION NO. 2016-

Adopted by the Sacramento City Council

AUTHORIZING A BUDGET TRANSFER FOR LEGAL EXPENSES AND AUTHORIZING A LEGAL SERVICES AGREEMENT FOR THE CITY'S DEFENSE IN ONGOING LITIGATION RELATED TO CURTIS PARK VILLAGE (M16-008)

A. The City has been named as a defendant in the matter Petrovich Development Co., v. City of Sacramento et al.

B. In order to provide for the defense of the City, outside legal assistance is required and funding is necessary to cover current and future anticipated expenses.

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

Section 1. The Curtis Park Village Litigation project is established as I21005400

Section 2. The City Manager is authorized to transfer $300,000 from the Development Services Fund (Fund 2016) fund balance to I21005400.

Section 3. The City Attorney is authorized to execute a contract with Meyers Nave Riback Silver & Wilson in an amount not-to-exceed $300,000 for litigation assistance with the lawsuit Petrovich Development Co., v. City of Sacramento, et al.

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CITY OF SACRAMENTO

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of June ___, 2016, by and between the **CITY OF SACRAMENTO,** a municipal corporation ("CITY"), and

Meyers Nave Riback Silver & Wilson, a Professional Law Corporation
555 12th Street, Suite 1500
Oakland, California 94607
Attn: Shaye Diveley, Of Counsel
Phone: (510) 808-2000
Fax: (510) 444-1108

("ATTORNEY"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, ATTORNEY shall provide to CITY the services described in Exhibit A. ATTORNEY shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) ATTORNEY notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) ATTORNEY estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor.

2. **Fees and Costs.** CITY shall compensate ATTORNEY for legal services rendered at the hourly billing rates set forth in Exhibit B.

3. **General Provisions.** The General Provisions set forth in Exhibit C are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by ATTORNEY and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

4. **CITY Representative.** The CITY Representative(s) specified in Exhibit A, or the Representative's designee, shall administer this Agreement for CITY.

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

6. **Authority.** The person signing this Agreement for ATTORNEY hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of ATTORNEY and to bind ATTORNEY to the performance of its obligations hereunder.

7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By:_____

Print name: James Sanchez

Title: City Attorney

APPROVED TO AS FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachments

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

ATTORNEY:

Meyers Nave Riback Silver & Wilson, a Professional Law Corporation

_____

94-305-035-8

_____
Federal I.D. No.

333-5041-4

_____
State I.D. No.

136901

_____
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY *(check one)*:

_____ Individual/Sole Proprietor
_____ Partnership
__X__ Corporation
_____ Limited Liability Company
_____ Other (*please specify:* _____)

_____
Signature of Authorized Person

Principal in Charge, Sacramento Office

_____
Title

_____
Additional Signature *(if required)*

_____
Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of ATTORNEY: _____

Address: _____

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

1. I have read and understand the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") provided to me by the City of Sacramento ("City") and attached as Exhibit D to my City contract or agreement ("Contract").

2. As a condition of receiving the City Contract, I agree to fully comply with the Requirements, as well as any additional requirements that may be specified in the City's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").

3. I understand, 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

   I agree that should I offer any of the above listed employee benefits, that I 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. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

   a. In the event that 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, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

   b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.

   c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.

d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.

e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with 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, in the infrastructure, 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 the Contract is executed with the City.

g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).

h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

5. I understand that failure to comply with the provisions of Section 4. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; 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. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.

7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

8. I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one contractor is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the Ordinance requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

9. In consideration of the foregoing, I shall 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 me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

_____ _____
Signature of Authorized Representative Date

_____
Print Name

_____
Title

EXHIBIT A

ATTORNEY AND PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative(s) for this Agreement is:

Brett Witter, Supervising Deputy City Attorney
City of Sacramento
915 I Street, 4th Floor
Sacramento, CA 95814
Phone: (916) 808-5346
Fax: (916) 808-7455
E-mail: bwitter@cityofsacramento.org

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

The ATTORNEY Representative for this Agreement is:

Shaye Diveley
Meyers Nave
555 12th Street, Suite 1500
Oakland, California 94607
Phone: (510) 808-2000
Fax: (510) 444-1108
E-mail: sdiveley@meyersnave.com

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

2. Scope of Services.

As directed by the City Attorney or the CITY Representative, ATTORNEY shall represent and defend the City of Sacramento in the litigation captioned *Petrovich Development Co., et al. v. City of Sacramento, et al.*, Sacramento Superior Court Case No. 34-2016-80002289, through and including any appeal of any decision of the trial court.

ATTORNEY shall perform this work primarily through the following persons: Amrit Kulkarni, Shaye Diveley and Adam Regele.

3. **Time of Performance.** This Agreement shall become effective on the date that it is approved by both parties, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided in Exhibit C.

4. **Reporting – Litigation.**

   A. ATTORNEY shall provide CITY with a preliminary status report and evaluation within thirty (30) days which shall include an evaluation of the factual and legal issues for the matter. In this preliminary report, ATTORNEY shall will also make recommendations for discovery and any needed investigation, and provide an estimate of total anticipated legal costs and fees for the handling of this matter, as described in Exhibit B, paragraph four.

   B. ATTORNEY shall provide to the CITY representative an electronic version of all pleadings, motions, and discovery documents filed or propounded by ATTORNEY in this case in a Microsoft Word or WordPerfect format compatible with that used by the City Attorney's office.

   C. In the event that ATTORNEY's handling of the above-designated matter exceeds a period of twenty-four (24) months, ATTORNEY shall, in addition to providing regular status reports to CITY, also report directly to the CITY representative on an annual basis and no later than June 30th of each year, setting forth in detail the status of the matter, and ATTORNEY's plan for further handling of the matter, and the estimated length of time to conclude the matter.

5. **Reporting – Advisory Matters.** Within 10 days of any request by the CITY representative identified above, ATTORNEY shall provide CITY with a status report on the progress of the representation.

EXHIBIT B

LEGAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **ATTORNEY'S Compensation.** CITY shall compensate ATTORNEY for legal services rendered at an hourly billing rate of $395 for Amrit Kulkarni, $365 for Shaye Diveley, and $285 for all associate attorneys, to be billed in tenths of an hour. All office, travel, discovery, hearing, trial or other time shall be charged at this rate. CITY shall compensate ATTORNEYS for paralegal services rendered at an hourly billing rate of $160 to be billed in tenths of an hour. CITY shall not be charged for services that are strictly of a clerical, administrative or secretarial nature, such as scheduling, calendaring or word processing. The total of all fees paid to ATTORNEY for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of Three Hundred Thousand Dollars ($300,000.00) (Charged to line item I2100 5400)

   Such compensation shall be the sole and total remuneration for the rendition of services under this Agreement.

2. **ATTORNEY'S Reimbursable Expenses.** CITY shall reimburse ATTORNEY for the actual, reasonable and necessary expense of travel to or from the Sacramento metropolitan area, approved in advance, at $0.59 per mile. ATTORNEY will not charge CITY for the cost of telephone calls or photocopying. Litigation costs and expenses for statutory fees, witness fees, reporters' per diem and stenographic transcriptions, jury fees, and the expenses of serving process shall be advanced by ATTORNEY and reimbursed by CITY. Expert consultants and witnesses may be retained by ATTORNEY on terms acceptable to CITY, approved in advance, in which case CITY shall reimburse ATTORNEY or pay such consultants or experts directly.

3. **Billing.**

   A. Legal billings shall be submitted to CITY every sixty (60) days unless otherwise advised.

   B. Each task shall be distinctly and completely identified; the City will not pay invoices that contain block billing. Each billing entry must contain the initials of the individual performing the task, the nature of the task, the date it was performed, and the length of time it took.

   C. Costs under $500.00 shall be paid by ATTORNEYS and submitted with their normal billing.

   D. CITY reserves the right to audit all invoices.

   E. Payments to ATTORNEY shall be made within a reasonable time after receipt of ATTORNEY'S invoice. ATTORNEY may request, but CITY is under no obligation to approve, payment on a monthly basis. ATTORNEY shall be responsible for supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

F. In addition to the provisions stated elsewhere in this Agreement regarding the payment of fees, billing and budgeting, the following guidelines for billing apply:

(1) CITY expects each individual working on the matter for which ATTORNEY were retained to have the necessary experience to perform the services required to protect or pursue CITY'S interests in the matter in a cost effective manner.

(2) CITY expects ATTORNEY to select the individual most suitable for the task required and the specific needs of the matter, and to use the maximum efficiencies available. Billings for services performed by the inappropriate level of personnel will be reduced by the City based on rate adjustments for the appropriate level of personnel.

(3) CITY will not pay for unnecessary review of texts, codes, rules of court, or other fundamental references. CITY will pay the hourly rate for specific legal research which is unique to the matter, assuming that ATTORNEY have used maximum efficiencies and that ATTORNEYS have not already performed research in the same or similar areas of law.

(4) CITY acknowledges the benefit of communications between attorneys in the firm. CITY does, however, expect that intra-office conferences will only be held as needed, and will be kept to a minimum. Intra-office conferences shall be for the purpose of discussing strategy and legal issues which directly further the matter. CITY will not pay for conferences which are supervisorial or instructional. Any invoice which lists an intra-office conference that exceeds these guidelines must contain a full explanation and is subject to reduction by CITY. CITY will not pay for "team meetings" and CITY will scrutinize all intra-office conferences for "value added" to the matter by the conference, for the number of individuals attending the conference, the length of the conference, the subjects discussed at the conference and who participated in it, and will, in CITY'S sole discretion, determine if such value has been added.

(5) CITY will not pay for local telephone calls, incoming facsimiles, postage, time spent on filing, calendaring, indexing pleadings, photocopying, conferences with Clerks of court or court reporters, proofreading, re-drafting due to substandard work, time billed by summer interns or associates, time for more than one individual to attend a trial, hearing, court appearance, arbitration, mediation, deposition, third party meeting, conference call or similar event, unless otherwise approved by CITY in advance, or opening, organizing or closing files.

(6) Vague billing which does not contain sufficient information to allow City's reviewer of the invoice to determine the nature of the task, the reason for the task, and the individual performing the task is subject to reduction by CITY.

(7) CITY will not reimburse for overtime, word processing, supplies, anything identified on an invoice as "miscellaneous," or any other unidentified charges.

4. Budget.

A. Within ten (10) days, ATTORNEY shall provide CITY with a proposed budget for the services to be rendered pursuant to this Agreement. The budget shall include all projected fees and costs to be incurred by ATTORNEY and necessary for completion of the services necessary to conclude the representation. The budget shall be a good faith estimate and shall be as complete and detailed as possible, including such things as discovery and motions for trial, preparation of documents for transactional services, and anticipated research and investigations. The proposed budget shall identify the projected total hours that will be billed to each task, and the individual that will be performing the task. Any deviation from the budget in excess of ten percent (10%) must be approved in advance by the City Attorney or designee. CITY shall not be responsible for any billings that exceed that deviation without prior approval.

B. Should it become reasonably apparent to ATTORNEY that the actual billings will exceed ATTORNEY'S initial estimate of anticipated legal costs and fees, ATTORNEY shall immediately notify the CITY thereof in advance and shall submit a revised written estimate for CITY's approval.

EXHIBIT C
LEGAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. **Independent Contractor**.

   A. It is understood and agreed that ATTORNEY (including ATTORNEY's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither ATTORNEY nor ATTORNEY'S assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to ATTORNEY under the provisions of this Agreement, and ATTORNEY shall be issued an IRS Form 1099 for its services hereunder. As an independent contractor, ATTORNEY hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of ATTORNEY'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. It is further understood and agreed by the parties hereto that ATTORNEY, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished by the Services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by ATTORNEY for accomplishing such results. To the extent that ATTORNEY obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the ATTORNEY's sole discretion based on the ATTORNEY's determination that such use will promote ATTORNEY'S efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that ATTORNEY use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

   C. If, in the performance of this Agreement, any third persons are employed by ATTORNEY, such persons shall be entirely and exclusively under the direction, supervision, and control of ATTORNEY. 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 ATTORNEY. It is further understood and agreed that ATTORNEY shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of ATTORNEY'S assigned personnel and subcontractors.

2. **Licenses; Permits, Etc.** ATTORNEY represents and warrants that ATTORNEY has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature which are legally required for ATTORNEY to practice its profession or provide any services under the Agreement. ATTORNEY represents and warrants that

ATTORNEY 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 which are legally required for ATTORNEY to practice its profession or provide such Services. Without limiting the generality of the foregoing, if ATTORNEY is an out-of-state corporation, ATTORNEY warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Conflicts of Interest.** ATTORNEY represents and warrants that they have made a diligent effort to determine whether there are any actual or potential conflicts of interest that would preclude or interfere with ATTORNEY'S performance of this Agreement, and that no such conflict of interest exists. ATTORNEY shall indemnify and hold harmless CITY from and against any and all liability, loss, expense and obligation arising directly or indirectly out of any breach of the foregoing representation and warranty. ATTORNEY agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement.

4. **Confidentiality of CITY Information.** ATTORNEY understands and agrees that during the course performing the services required by this agreement, or in contemplation thereof, ATTORNEYS may have access to private or confidential information which may be owned or controlled by CITY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to CITY. ATTORNEYS agree that all information disclosed by CITY to ATTORNEYS shall be held in confidence and used only in performance of the services required by this Agreement. A violation of this section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

5. **Suspension and Termination.**

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

   B. CITY reserves the right to discharge ATTORNEY and terminate this Agreement at any time. In the event of such discharge or termination, CITY shall compensate ATTORNEY for services rendered and expenses necessarily incurred up to and including the date of discharge and expenses unavoidably incurred by ATTORNEY thereafter.

   C. ATTORNEY may terminate this Agreement at any time by giving to CITY Attorney not less than thirty (30) days prior written notice of termination. The notice shall specify the effective date of and reason for the termination.

   D. This Agreement is personal to ATTORNEY and any attempted assignment including by successors or assigns, shall be void, unless approved in writing by CITY.

   E. Upon any termination, ATTORNEY shall immediately return to CITY the file and all materials owned by CITY and cooperate fully in necessary completion and filing of any

necessary Substitution of Attorney documents.

6. **Indemnity.**

A. Indemnity: ATTORNEY shall fully indemnify and save harmless, CITY, its 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 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"), 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 ATTORNEY, 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, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the ATTORNEY, and whether or not such Liabilities are litigated, settled or reduced to judgment.

B. Obligation to Defend: ATTORNEY shall, upon CITY'S request, defend at ATTORNEY'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 ATTORNEY, its sub-ATTORNEYs, 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: 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, nor shall the limits of such insurance limit the liability of ATTORNEY hereunder. This section shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 4 (Confidentiality of CITY Information) above. The provisions of this section shall survive any expiration or termination of this Agreement.

7. **Publicity.** If any publicity is generated by the subject matter of this representation, ATTORNEYS will consult with CITY before making any statement to any media outlet (whether radio, print or television) about the content and timing of such statement.

8. **Insurance Requirements.** During the entire term of this Agreement, ATTORNEY shall maintain the following insurance:

A. Minimum Scope of Insurance: Coverage should be at least as broad as:

(1) Insurance Services Office Form No. CG 0001 (Commercial General Liability);

(2) Insurance Services Office Form No. CA 0001 (Ed. 1/87) (Automobile Liability, Code "any auto");

(3) Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance:

(4) Professional Liability (Errors and Omissions) insurance against loss due to error, omission or malpractice.

B. Minimum Limits of Insurance: ATTORNEY shall maintain limits no less than:

(1) Commercial General Liability; $1,000,000 combined single limit per occurrence, including endorsements for contractual liabilities, broad form property damage and personal injury.

(2) Automobile Liability: $1,000,000 combined single limit per accident for personal injury and property damage arising from owned, hired and non-owned vehicles.

(3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of $1,000,000 per accident.

(4) Professional Liability (Errors and Omissions): $2,000,000 combined single limit per occurrence.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the CITY.

D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages:

(a) The General Liability and Automobile Liability policies shall be written on an occurrence form and shall name CITY, its officers, officials, agents, employees and volunteers as additional insureds. Such policy(ies) of insurance shall be endorsed so that ATTORNEY's insurance shall be primary and any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of ATTORNEY'S insurance and shall not contribute with it.

(b) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(c) Coverage shall state that ATTORNEY'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.

(2) All Coverages:

(a) Each insurance policy required by this Agreement shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to CITY. In addition, ATTORNEY agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been give to CITY and CITY approves the reduction in coverage or limits. ATTORNEY further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to CITY and CITY approves such increase.

(b) In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. ATTORNEYS shall furnish CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to CITY's execution of this Agreement.

E. Acceptability of Insurers: Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B:IX be acceptable.

F. Verification of Coverage: ATTORNEY shall furnish CITY with certificates of insurance showing compliance with the above requirements and with original endorsements affecting all coverages required by this Agreement both prior to the execution of this Agreement, and during the pendency of this Agreement at any time upon request by CITY. The certificates and/or endorsements shall set forth a valid policy number for CITY, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A.

G. Payment Withhold: CITY shall withhold payments to ATTORNEY if the certificates of insurance and endorsements required in this section are canceled or ATTORNEY otherwise ceases to be insured as required herein.

9. **Disqualification of Judges.** At the option of the City Attorney, judges may be disqualified from hearing CITY litigation, and ATTORNEY shall adhere to such decision of the City Attorney. In the event that ATTORNEY is of the opinion that a judge ought to be disqualified, the City Attorney must be consulted in advance by ATTORNEY, and ATTORNEY must obtain the City Attorney's written consent to such disqualification.

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

A. Compliance With Regulations: ATTORNEY 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: ATTORNEY, with regards to the work performed 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. ATTORNEY 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 ATTORNEY for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by ATTORNEY of ATTORNEY'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: ATTORNEY 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 ATTORNEY is in the exclusive possession of another who fails or refuses to furnish this information, ATTORNEY 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 ATTORNEY 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 ATTORNEY under this Agreement until ATTORNEY complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: ATTORNEY 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. ATTORNEY 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 ATTORNEY becomes

involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, ATTORNEY may request CITY to enter such litigation to protect the interests of CITY.

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

12. **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.

13. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by ATTORNEY, 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.

14. **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.

15. **Attorney's Fees.** In any action to enforce the terms of this Agreement, the prevailing party shall recover its reasonable attorneys' fees.

16. **Assignment Prohibited.** The expertise and experience of ATTORNEY 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 ATTORNEY under this Agreement. In recognition of this interest, ATTORNEY 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.

EXHIBIT D

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 "1."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "2."

Attachment 1

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
  Contract Services Unit
  921 10th St., Room 402
  Sacramento, CA 95814-2714

- 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 2

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
  Contract Services Unit
  921 10th St., Room 402
  Sacramento, CA 95814-2714

- 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.