

PROJECT #:
PROJECT NAME:
DEPARTMENT:
DIVISION:

CITY OF SACRAMENTO

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

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

*DOWNTOWN SACRAMENTO PARTNERSHIP
900 J Street, 2nd Floor
Sacramento, CA 95814
Phone – 916-442-8575; Fax – 916-442-2053*

("CONSULTANT" or "DSP"), who agree as follows:

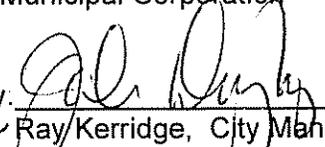
- 1. Services.** Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to CITY the services described in Exhibit A. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit A. CONSULTANT shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONSULTANT notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONSULTANT estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- 2. Payment.** CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONSULTANT for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONSULTANT shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices which CONSULTANT uses for billing clients similar to CITY.
- 3. Facilities and Equipment.** Except as set forth in Exhibit C, CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONSULTANT only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- 4. General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONSULTANT 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.

5. **CITY Representative.** The CITY Representative specified in Exhibit A, or the Representative's designee, shall administer this Agreement for CITY.
6. **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. CONSULTANT is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
7. **Authority.** The person signing this Agreement for CONSULTANT hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONSULTANT and to bind CONSULTANT to the performance of its obligations hereunder.
8. **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: 
 For Ray/Kerridge, City Manager

APPROVED TO AS FORM:


 City Attorney

ATTEST:

 City Clerk

Attachments

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

CONSULTANT:

DOWNTOWN SACRAMENTO PARTNERSHIP

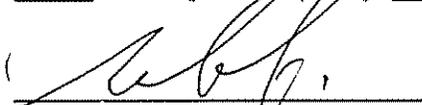
68-0270320
 Federal I.D. No.

 State I.D. No.

 City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

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


 Signature of Authorized Person
Executive Director
 Title

 Additional Signature (if required)

 Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Consultant: DOWNTOWN SACRAMENTO PARTNERSHIP

Address: 900 J street, 2nd Floor, Sacto, CA 95814

The above named Consultant ("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 E 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

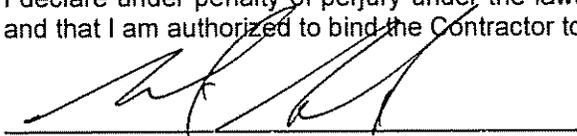
- 7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award

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

May 3, 2006

Date

Michael Rutt

Print Name

Executive Director

Title

EXHIBIT A

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Sheryl A. Taylor, Sr. Project Manager
CITY OF SACRAMENTO, ECONOMIC DEVELOPMENT DEPARTMENT
1030 15th Street, 2nd Floor
Sacramento, CA 95814
Phone – 916-808-7204; Fax – 916-808-8161

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

The CONSULTANT Representative for this Agreement is:

Danielle de l'Etoile
DOWNTOWN SACRAMENTO PARTNERSHIP
900 J Street, 2nd Floor
Sacramento, CA 95814
Phone – 916-442-8575; Fax – 916-442-2053

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

- 2. Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is not required for this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)
- 3. Scope of Services.** The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
- 4. Time of Performance.** The services described herein shall be provided between April 2006 and April 2009.

ATTACHMENT 1 TO EXHIBIT A

SCOPE OF SERVICES

1. DSP will be responsible for the attraction and development of the Old Sacramento retail environment, to continue the Old Sacramento tradition of an eclectic, unique and attractive shopping area that caters to residents and visitors alike
2. DSP or a representative will work with City staff, and Old Sacramento property owners. The assignment includes marketing Old Sacramento to targeted businesses and retail/real estate brokers by leveraging existing resources including:
 - a. Knowledge of the strategic and commercial direction for Old Sacramento including, but not limited to:
 - Old Sacramento 2005 Retail Strategy
 - Old Sacramento 2004 Strategic Plan
 - Downtown Sacramento Partnership 5-Year Strategic Action Plan
 - Historic Old Sacramento Foundation and Old Sacramento Business Association Business Plans
 - Merged Downtown Redevelopment Plan
 - 2003 City of Sacramento Riverfront Master Plan
 - b. Establishing and maintaining relationships with Old Sacramento property owners, maintain and update a property database to track property ownership, parcel size, building size and configuration, lease space, and current leases, including rents and lease termination dates.
 - c. Identify retailers consistent with the planned strategic and commercial direction for Old Sacramento.
 - With prior approval, travel to comparable shopping districts and meet with targeted retailers to market Old Sacramento
 - Identify potential users that could move into existing lease space
 - Become familiar with the site needs of various retail users
 - Identify tenant improvements and/or modifications needed to attract targeted retailers
 - d. Augment the Old Sacramento 2005 Retail Strategy
 - Review and provide ideas such as the mix of local or chain retailers, restaurants, and nightclubs
 - Develop a "tool box" of incentives, including façade rebates, SBA loans, master lease program, window and signage display training, secret shopper program, etc.
 - Track major or recurring issues affecting business decisions in regard to why or why not a business wants to relocate or expand in Old Sacramento
3. Provide monthly statistical reports regarding the retail environment. Examples of statistics are the ratio of vacant space to total space, space being actively marketed, sales calls completed, and major issues.
4. Upon completion of the first 3-month period, DSP shall provide an electronic report to CITY that details Old Sacramento property information including owner names and contacts, property specifics, tenant information and lease terms with rates.
5. DSP shall also compile a report that consolidates available Old Sacramento statistics based on existing reports and resources.

EXHIBIT B

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONSULTANT'S Compensation.** The total of all fees paid to the CONSULTANT 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 \$185,000.00.
2. **Appropriate Billable Hourly or Daily Rates.**
 - A. Unless payment under this Agreement will be made on a flat fee or lump sum basis, CONSULTANT shall be paid the hourly or daily rates set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONSULTANT'S Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONSULTANT for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONSULTANT.**
 - A. Payments to CONSULTANT shall be made within a reasonable time after receipt of CONSULTANT'S invoice, said payments to be made in proportion to services performed or as otherwise specified in Section 2.B, above. CONSULTANT may request payment on a monthly basis. CONSULTANT shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONSULTANT shall contain the following information:
 1. Job Name
 2. Description of services billed under this invoice, and overall status of project
 3. Date of Invoice Issuance
 4. Sequential Invoice Number
 5. CITY'S Purchase Order Number
 6. Total Contract Amount
 7. Amount of this Invoice (Itemize all Reimbursable Expenses)
 8. Total Billed to Date
 9. Total Remaining on Contract
 10. Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

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

Sheryl A. Taylor, Sr. Project Manager
CITY OF SACRAMENTO, ECONOMIC DEVELOPMENT DEPARTMENT
1030 15th Street, 2nd Floor
Sacramento, CA 95814
Phone – 916-808-7204; Fax – 916-808-8161

- 5. **Additional Services.** Additional Services are those services related to the scope of services of CONSULTANT set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY'S Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.
- 6. **Accounting Records of CONSULTANT.** CONSULTANT shall maintain for three (3) years after completing of all Services and Additional Services hereunder, all records under this Agreement, including, but not limited to, records of CONSULTANT'S direct salary costs for all Services and Additional Services performed under this Agreement and records of CONSULTANT'S Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep such records available for inspection and audit by representatives of the Department of Finance of CITY at a mutually convenient time.
- 7. **Taxes.** CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT'S compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONSULTANT hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONSULTANT'S breach of this Section 7.

ATTACHMENT 1 TO EXHIBIT B

Subsequent to the execution of this Agreement and upon presentation of an invoice, the CITY agrees to pay CONSULTANT for performance of Services as follows:

1. \$12,500 on a quarterly basis for the initial eight (8) quarterly payments for the first two years of this Agreement.
2. \$13,750 on a quarterly basis for the next four (4) quarterly payments for the third and final year of this Agreement.
3. \$2,500 on a quarterly basis for a total of twelve (12) quarterly payments as reimbursement for expenses and administration costs related to the performance of this Agreement.

CONSULTANT may submit invoices for such quarterly payments at or around the commencement each quarter of performances of Services. In the event this Agreement is terminated before the end of any quarter for which a quarterly payment has been made to CONSULTANT, CONSULTANT shall refund that portion of the payment representing the prorated period of time from the date of termination to the end of the quarter. In no event shall CITY be obligated to compensate CONSULTANT for services it fails to render pursuant to this Agreement, nor reimburse CONSULTANT for expenses incurred post-termination.

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

CITY shall [*check one*] X Not furnish any facilities or equipment for this Agreement, or
 furnish the following facilities or equipment for the Agreement.

**EXHIBIT D
CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONSULTANT (including CONSULTANT'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONSULTANT nor CONSULTANT'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 CONSULTANT under the provisions of this Agreement, and CONSULTANT shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONSULTANT 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 CONSULTANT'S employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONSULTANT, 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 CONSULTANT for accomplishing such results. TO the extent that CONSULTANT 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 CONSULTANT'S sole discretion based on the CONSULTANT'S determination that such use will promote CONSULTANT'S efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONSULTANT 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 CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. 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 CONSULTANT. It is further understood and agreed that CONSULTANT shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONSULTANT'S assigned personnel and subcontractors.

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

2. **Licenses; Permits, Etc.** CONSULTANT represents and warrants that CONSULTANT has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession or provide any services under the Agreement. CONSULTANT represents and warrants that CONSULTANT 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 CONSULTANT to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONSULTANT is an out-of-state corporation, CONSULTANT warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONSULTANT shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations under this Agreement. Neither party shall be considered in default of this Agreement, nor be entitled to additional compensation, to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
4. **CONSULTANT Not Agent.** Except as CITY may specify in writing, CONSULTANT and CONSULTANT'S personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT and CONSULTANT'S personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT'S performance of Services under this Agreement. CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONSULTANT 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.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONSULTANT 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, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the CITY. CONSULTANT agrees to protect all City Information and treat it

as strictly confidential, and further agrees that CONSULTANT shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. A violation by CONSULTANT of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONSULTANT Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONSULTANT pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, Photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONSULTANT shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONSULTANT shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONSULTANT pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONSULTANT not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY'S failure to provide such notice within such time period shall not relieve CONSULTANT of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONSULTANT by CITY, whether received in connection with CONSULTANT'S proposal to CITY or in connection with any Services performed by CONSULTANT, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONSULTANT of any request for the disclosure of such information. The CONSULTANT shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONSULTANT shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONSULTANT to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

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

8. **Standard of Performance.** CONSULTANT shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONSULTANT'S profession in California. All products of whatsoever nature which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONSULTANT'S profession. CONSULTANT shall assign only competent personnel to perform

Services pursuant to this Agreement. CONSULTANT shall notify CITY in writing of any changes in CONSULTANT'S staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person(s) is not performing in accordance with the standards required herein, CONSULTANT shall remove such person(s) immediately upon receiving notice from CITY of the desire of CITY for the removal of such person(s).

9. **Term; Suspension; Termination.**

- A. 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 herein.
- B. CITY shall have the right at any time to temporarily suspend CONSULTANT'S performance hereunder, in whole or in part, by giving a written notice of suspension to CONSULTANT. If CITY gives such notice of suspension, CONSULTANT shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONSULTANT. If CITY gives such notice of termination, CONSULTANT shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
1. CONSULTANT shall promptly deliver to CITY copies of all information prepared pursuant to this Agreement.
 2. CITY shall pay CONSULTANT the reasonable value of Services rendered by CONSULTANT prior to termination; provided, however, CITY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had the Agreement not been terminated or had CONSULTANT completed the Services required by this Agreement. In this regard, CONSULTANT shall furnish

Exhibit D

to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by CONSULTANT. The foregoing is cumulative and does not affect any right or remedy which CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONSULTANT 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 reasonable 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 CONSULTANT, its subconsultants, 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 CONSULTANT, and whether or not such Liabilities are litigated, settled or reduced to judgment.
- B. Obligation to Defend: CONSULTANT shall, upon CITY'S request, defend at CONSULTANT'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 CONSULTANT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.
- C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 10, the existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY'S rights under this Section 10, nor shall the limits of such insurance limit the liability of CONSULTANT hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONSULTANT 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 if specifically required in the Scope of Services (Exhibit A).

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

- (1) Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (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): \$1,000,000 combined single limit per occurrence if specifically required in the Scope of Services (Exhibit A).

C. Deductibles and Self-Insured Retention's: 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) CITY, its officials, employees and volunteers shall be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT. The coverage shall contain no special limitations on the scope of the protection afforded to CITY, its officials, employees or volunteers.
 - (b) CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute with it.

- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (d) Coverage shall state that CONSULTANT'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:

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, CONSULTANT 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. CONSULTANT 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.

- 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: CONSULTANT shall furnish CITY with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Agreement. 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 CONSULTANT if the certificates of insurance and endorsements required in subsection F, above, are canceled or CONSULTANT otherwise ceases to be insured as required herein.

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

- A. Compliance With Regulations: CONSULTANT 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: CONSULTANT, 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. CONSULTANT 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 CONSULTANT for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONSULTANT of CONSULTANT'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: CONSULTANT 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 CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT 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 CONSULTANT 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 CONSULTANT under this Agreement until CONSULTANT complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONSULTANT 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. CONSULTANT 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 CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONSULTANT may request CITY to enter such litigation to protect the interests of CITY.

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

provisions of the Sacramento City Code.

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONSULTANT, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONSULTANT 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 CONSULTANT under this Agreement. In recognition of this interest, CONSULTANT shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY'S written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

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

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000 00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

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

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

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

Attachment A



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

On (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
915 I St., 2nd Floor
Sacramento, CA 95814

- 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
Contract Services Unit
915 I St., 2nd Floor
Sacramento, CA 95814
- 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.