



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-00803

June 20, 2017

Consent Item 02

Title: Agreement for Naming Rights and Sponsorship Opportunities for the Sacramento Convention Center Complex

Location: 1301 L Street and 1400 J Street, District 4

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute an agreement with The Superlative Group (TSG) for naming rights and sponsorships for the Sacramento Convention Center Complex.

Contact: Sabrina Tefft, Assistant Project Manager, (916) 808-3789, Economic Development Department; Desmond Parrington, Project Manager, (916) 808-5044; Fran Halbakken, Assistant City Manager/Project Executive, (916) 808-7194; Office of the City Manager

Presenter: None

Attachments:

1-Description/Analysis

2-Contract

Description/Analysis: On March 3, 2017, the City of Sacramento released a Request for Proposals (RFP) to solicit a company to provide asset assessment, valuation, sales and marketing the naming rights and sponsorship opportunities for the Sacramento Community Theater and the Sacramento Convention Center. Based on the evaluation panel's review and scoring of the four proposals received, staff recommends The Superlative Group as the asset valuation and sponsorship sales team for the Sacramento Community Theater and the Sacramento Convention Center.

The Superlative Group has prior experience in assessing the Sacramento Community Theater. In 2014, they conducted an asset inventory and valuation inside and outside the Community Center Theater.

The Superlative Group will conduct an asset inventory and valuation to identify the essential assets that are available for revenue generation and market these opportunities. They will implement a sales campaign using a systematic approach to generate and evaluate potential naming rights partners. The company has an extensive database of national and international corporate contacts and will identify prospective corporations, foundations, and endowments and make recommendations in close collaboration with City staff.

The Superlative Group will provide monthly updates to the City and estimates it will take ninety days to complete the asset inventory and valuation and twelve to eighteen months to complete the sales campaign.

The Sacramento Community Theater will be undergoing a substantial renovation, while the Sacramento Convention Center will be going through a renovation and expansion of their facilities. Naming rights and sponsorship programs will bring in private funds that will benefit the renovation efforts for both projects.

Policy Considerations: The naming rights and sponsorship funding will be used for renovation, expansion and improvements to the Sacramento Convention Center Complex, which supports the following goal and policy of the City's General Plan:

- ERC 4.1.3 The City shall enhance the quality of existing City-owned arts and cultural resources and facilities through reinvestment, communications and marketing.

Economic Impacts: Not Applicable

Environmental Considerations: The specific actions requested under this staff report are exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

Sustainability: Not Applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: With the improvements being made to the Sacramento Community Theater and the Sacramento Convention Center, bringing in a sponsorship sales team will enable the City to generate revenue through sponsorship opportunities. The Superlative Group was selected earlier this year through a competitive RFP process.

Financial Considerations: Sufficient funding is available in the Convention Center Complex Renovation Project (M17100100) to execute a contract with The Superlative Group in the amount of \$255,000. In addition, The Superlative Group will receive 10% commission from the new funds they secure from any naming rights and sponsorships agreement(s) plus up to a 5% commission on any renewals of naming rights and sponsorship agreements after 20 years dependent upon their level of involvement at that time.

Local Business Enterprise (LBE): The Superlative Group is not a local business enterprise. The minimum LBE participation requirement was waived for the RFP process due to the unique nature of the work and the limited number of local firms that engage in this type of work.

PROJECT NAME: Sacramento Convention Center Complex Sponsorship/Naming Rights
AGREEMENT TERM: December 31, 2018
AUTHORIZED RENEWALS:
DEPARTMENT: City Manager's Office
DIVISION: Executive Office

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

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

*The Superlative Group
921 Huron Road
Cleveland, OH 44115
Phone: 216-592-9400/ E-mail: gallagher@superlativegroup.com*

("CONTRACTOR"), who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide the services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of the services: (a) CONTRACTOR notifies CITY and CITY agrees that the services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement 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 CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- 3. Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for CONTRACTOR to perform

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

services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

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 CONTRACTOR 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 those terms or conditions.
5. **Non-Discrimination in Employee Benefits.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. A summary of the requirements of Sacramento City Code Chapter 3.54, entitled "Requirements of the Non-Discrimination in Employee Benefits Code," can be viewed at: <http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.54. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.54 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies.
6. **Considering Criminal Conviction Information in the Employment Application Process.** This Agreement may be subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements of Sacramento City Code Chapter 3.62, entitled "Ban-The-Box Requirements," can be viewed at: <http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Agreement, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR's compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.62 constitutes a material breach of this Agreement, for which the CITY may terminate the Agreement and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.
7. **Additional Requirements for Surveying, Material Testing, and Inspection Services.** If this Agreement includes any land surveying, material testing, or inspection services provided for a City construction project, during the design, pre-construction, construction, or post-construction phases of the project, the Contractor and any subcontractor or subconsultant performing any such services shall comply with the provisions specified in Exhibit E.
8. **Authority.** The person signing this Agreement for CONTRACTOR represents and warrants that he or she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.

9. **Exhibits.** All exhibits referred to herein and attached hereto, and the “Requirements of the Non-Discrimination in Employee Benefits Code” and “Ban-The-Box Requirements” described above, are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: Howard Chan, City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A Scope of Service
- Exhibit B Fee Schedule/Manner of Payment
- Exhibit C Facilities/Equipment Provided
- Exhibit D General Provisions

CONTRACTOR:

The Superlative Group _____

NAME OF FIRM

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

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

Signature of Authorized Person

Print Name and Title

Additional Signature (*if required*)

Print Name and Title

EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Desmond Parrington, Project Manager
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814
Phone: 916-808-5044/E-mail: dparrington@cityofsacramento.org*

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

The CONTRACTOR Representative for this Agreement is:

*Myles Gallagher, President and CEO
The Superlative Group
921 Huron Road
Cleveland, OH 44115
Phone: 216-592-9400/ E-mail: gallagher@superlativegroup.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address or e-mail 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. Insurance. Insurance requirements are specified in Exhibit D, Section 11.

3. Conflict of Interest Requirements.

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

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

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

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

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

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

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

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

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

4. **Scope of Services.**

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

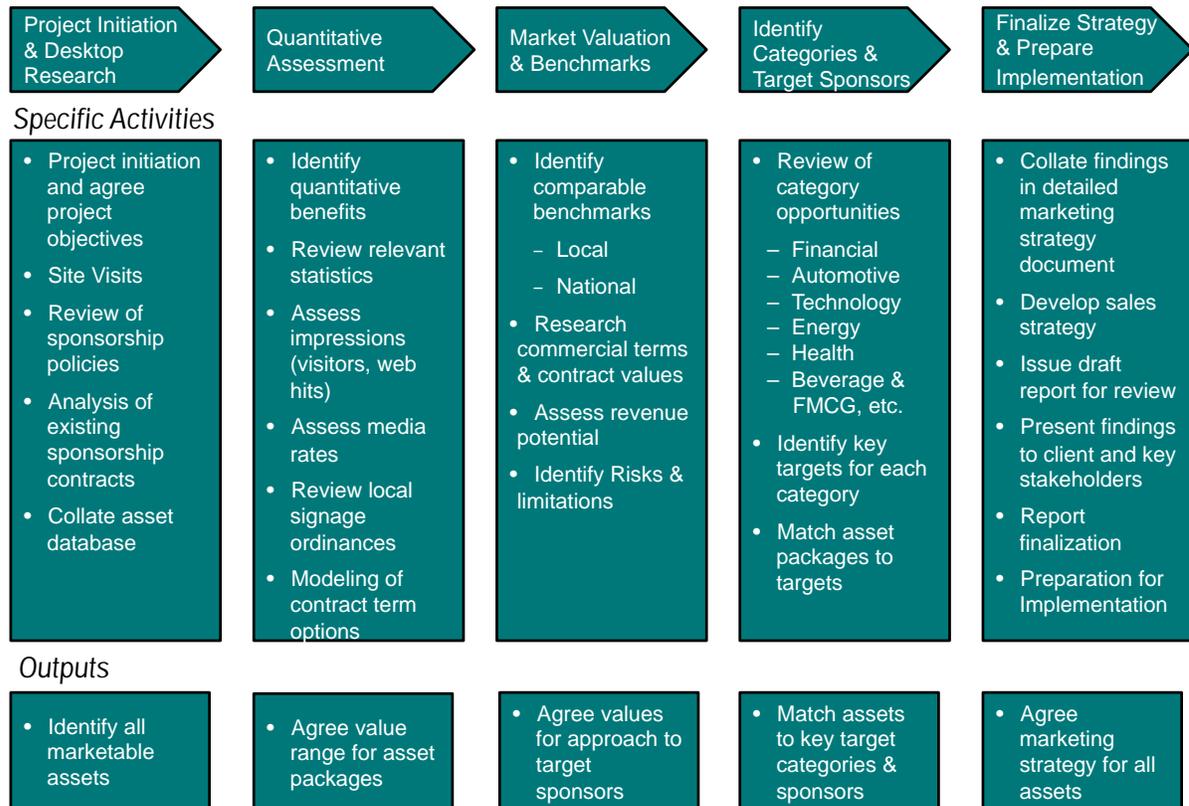
5. **Time of Performance.** The services described herein shall be provided during the 18-month period, ending no later than December 31, 2018.

Attachment 1 to Exhibit A

SCOPE OF SERVICES

APPROACH TO THE PROJECT

The following provides an overview of the activities and outputs, which will be undertaken during the development of the marketing strategy:



Phase I: Asset Inventory and Valuation

Superlative divides Phase I into two essential areas: Task I and Task II. In Task I, Superlative identifies the essential assets that are available for revenue generation. In Task II, Superlative develops packaging and marketing opportunities for Phase II.

Site Visits & Asset Database

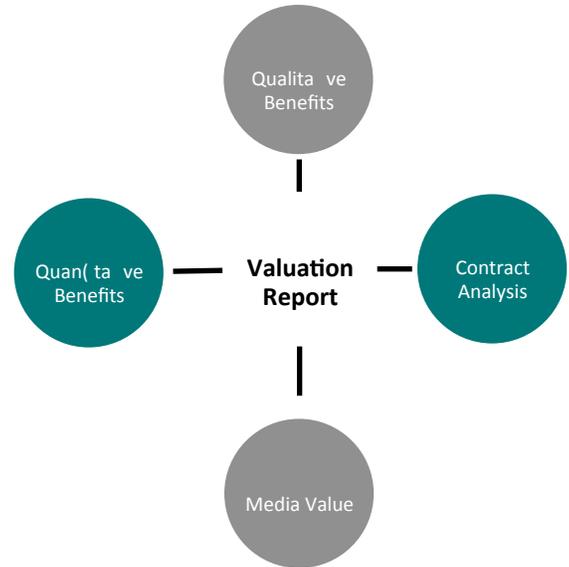
Upon appointment as sales agents on any new engagement, The Superlative Group carries out initial research to review relevant documentation such as strategic plans, design briefs and project renderings to gain an in-depth knowledge of the project and make an accelerated start on our asset identification process.

Site visits are undertaken as soon as possible to view the assets being valued. We intend to have our team on site as we start the asset research process. A digital inventory of images and renderings is compiled which is used during the valuation process and subsequently, during development of promotional materials throughout the sales implementation process. This information is used to identify commercial opportunities as part of the marketing strategy and valuation process.

Task I: Valuation

In Phase I, the project team will identify and value all of the assets that the Sacramento Convention Center has available to generate revenue. In this Phase, the project team will break down the valuation process into four elements: Media Value, Quantitative Benefits, Qualitative Benefits and Contract Analysis.

The key tasks of the four (4) elements of the Valuation report are outlined below:



Media Value

The first step in Media Value involves understanding the number of possible "impressions," more easily described as the number of possible advertising or sponsorship platforms that are available to reach the target audience. In assessing the Media Value, the number of available impressions for television, print and online exposure will be identified. Impressions are then scaled from "valued impressions" to "waste impressions," adjusting the Media Value accordingly.

The Media Value includes an assessment of the value of engaging the target audience and the quality of exposure received. Understanding the value of each impression with respect to a specific demographic or target audience is an important part of Media Value. For example, a target audience of 18-34-year-old males may be considered a "premium audience" by a wide range of partners, which would increase the Media Value.

The term "quality of exposure" is determined based on:

- How prevalent the Naming Rights Partner's "ID" (Name) is through the exposure period
- The "impact" its placement has

For example, a televised event at the Sacramento Convention Center will be inherently more valuable than a small sign outside of a meeting room. High "quality of exposure" can be generated when the sponsorship is integrated with an action of the audience that enhances or complements its experience. The final aspect of understanding Media Value is assessing the cost of engaging the target audience and achieving high-quality exposure. This will be an assessment of the cost of delivery (to the Naming Rights Partner or sponsor), and may include direct costs (installing a hard sign), overhead costs (maintaining a sponsored walkway or media platform) or development costs.

Quantitative Benefits

Quantitative Benefits reflect the ability to adequately measure the return on investment that Naming Rights and sponsorship partners can expect to receive. Quantitative Benefits include the direct or tangible benefits available to the partner. These typically form a significant portion of the overall Naming Rights and sponsorship value because each item is identified and guaranteed.

Quantitative Benefits are separated into several categories including:

- On-Site Signage

- Sporting or Event Tickets
- Marketing Collateral
- Display Opportunities

Using industry standards and its extensive experience in this market, Superlative will use pre-impression, or rate card, values to assign a price or value to each benefit identified.

Qualitative Benefits

Qualitative Benefits, or intangible benefits, add value to Naming Rights and sponsorships, but fall outside traditional media platforms and are often difficult to quantify. The Qualitative Benefits represent the premium value a partnership demands over alternative marketing investments.

Qualitative Benefits are classified into five broad categories:

- Prestige of Property
- Value of Audience
- Sponsorship Activation
- Sponsor Protection
- Geographic Reach

For example, the Naming Rights or sponsorship partner will receive an immeasurable amount of exposure from “word of mouth” advertising name mentions in TV and print media.

Contract Analysis

Along with the valuation, Superlative includes contract analysis and research in every Phase I report. The goal of Superlative’s research is to benchmark the activities of the Sacramento Convention Center against other previous agreements, establish a list of any limitations or processes that affect a sponsorship contract, develop a strategy to minimize the effects of those limitations and maximize all of the identified opportunities through a logical priority assessment. Three examples of Superlative’s research include:

- Review of Pre-Existing Sacramento Convention Center Contracts and Agreements – The Superlative Group has extensive experience developing, auditing and benchmarking contracts for its public and private sector clients. Not only are price, fulfillment obligations and relative value for each party reviewed, but also values against similar contracts with other entities are benchmarked. The value of the sponsorship to the City and Convention Center will be inhibited by any pre-existing contracts relating to sponsorship. A thorough understanding of your existing advertising contracts will assess the impact that existing agreements place on the sponsorship agreements
- Apply Standards and Regulations – The project team spends time early in the project reviewing all relevant statutes, signage regulations and rules to ensure the Sacramento Convention Center’s marketing opportunities, within context of established guidelines, are understood. Superlative remains in close contact with the City of Sacramento’s legal and executive teams to ensure the asset database is being developed in a manner that is consistent with the existing policy regarding assets for marketing purposes
- Analyze Marketing and Sponsorship Initiatives – Superlative’s extensive database includes many Naming Rights and sponsorship contracts from other public and private parks, arenas, amphitheaters, stadiums, convention centers,

theatres and universities. Superlative executives will collaborate with City and Convention Center representatives and other stakeholders to gauge the level of interest and enthusiasm for marketing partnerships

Throughout Phase I, Superlative's goal remains the same: to analyze assets to determine marketability in an effort to maximize revenue-generating opportunities. This analysis enables Superlative to determine the optimal sponsorship level for the Sacramento Convention Center.

Task II: Market Analysis

Superlative will outline prospective partners and provide a market analysis of packaging opportunities. Optimum revenue generation is attained when there is a comprehensive understanding of:

- The inventory available
- The needs of potential partners

Superlative's experience in identifying and documenting marketing rights, combined with its knowledge of (and relationships with) large corporations, will give the City the tools to ensure maximum revenues are leveraged out of every corporate partnership.

Phase II: Sales Campaign

Contact and Evaluate Potential Naming Rights Partners

Superlative's expertise extends to the selling process. To ensure that coverage is comprehensive, Superlative uses a systematic approach to contact marketing partners:

- Exhaustive contact database of Superlative's thousands of national and international corporate contacts, which is continually updated
- Identify and research prospective corporations, corporate foundations, private family foundations and other endowments through various subscribed databases to match the marketing needs of potential partners with the logical and most valuable assets of the Convention Center
- Collaborate closely with City and Convention Center executives on recommendations they may have
- Promote sales campaign with a description of the City's and Convention Center's initiatives through a myriad of resources
- Create Presentation Material – Such material will provide specific information for potential investments and/or partnerships with the Convention Center as a part of the Naming Rights and sponsorship program, including:
 - Market/Demographic data
 - Measured media value
 - Value justification for unmeasured media
 - Sponsorship benefits and options
 - Options for renewal
 - Financial investment

Negotiate and Complete Agreements

Superlative will assist in any way that is comfortable for the City. Superlative's executives can be the upfront negotiator or advise executives, depending on your desire and needs.

Present to City of Sacramento and Sacramento Convention Center Executives and

the Media

Superlative is well-versed in the appropriate procedures for announcements to local and national media outlets. Superlative will work with the City to accurately present a negotiated corporate partnership to the appropriate executives and media. It is important that partnerships be communicated accurately, both financially and politically, while being cognizant of objections and concerns.

Manage Contract Fulfillment

Superlative will work with City staff to develop a system that accurately tracks the status of newly developed corporate partnerships. The company's experience shows that contract fulfillment requires participation from sales, legal and accounting functions to ensure high-quality partner relationships.

Manage and Audit Ongoing Rights

Superlative establishes post-contract review mechanisms to ensure all benefits owed to the City are captured and that the City is meeting its obligations under these contracts. Superlative is a strong advocate of audits, especially where payments are performance-based.

Activation and Audit (Term of Agreement)

After delivery of a campaign agreement, the project team will assist the City in the activation and compliance of each aspect of that agreement. Specifically, Superlative shall:

- Finalize agreement terms and conditions
- Assist the City with the first year of activation of the sponsorships
- Assist in the development of payment schedules and compliance issues
- Assist the City's advertising department, or its vendor, with signage placement and design
- Provide other services as requested by the City of Sacramento

Progress Reports

The project team has significant experience working on major projects such as this. Superlative understands that effective communication with the client is a critical part of successful project delivery. As part of our standard reporting procedure, we use template reports to provide sales updates:

- Following all meetings with target companies regarding any Naming Rights, corporate sponsorship or revenue potential opportunity
- On a monthly basis to provide the project team with an update on activity during the period. We discuss these periodic sales update reports on a scheduled conference call

Reports are prepared in a template and serve as a record of discussion during sales meetings and log the following project details. Generally, our progress reports include the following information:

- Project Timescales and Sales Priorities
- Status and Progress of deliverables in Scope of Services
- Status of all activities, events and efforts
- Summary of meetings and presentations
- Summary of activity regarding market interest and feedback
- Summary of communications with potential sponsors

- Any deviations from project deliverables or schedule
- Plan of activities for next 30 days

The Superlative Group will agree to the format with the City's and Convention Center's project team as part of our project initiation process.

SCHEDULE

Superlative always quotes 90 days for the Phase I Asset Inventory & Valuation and a 12- to 18-month Phase II sales campaign, depending on the assets sold.

PHASE I

May 2017	Develop database of assets. Draft analysis and detailed valuation for each asset class.
June 2017	Evaluation of aesthetic treatments to maximize revenue potential. Identification of categories, corporations, brands and persons for each asset.
July 2017	Develop strategic recommendations and present findings. Finalize valuation report and marketing package for presentation to market.

PHASE II

August 2017-Project End	Create a prospect list and timeline for marketing and negotiation of Naming Rights agreements. Implement the marketing plan. Contact potential Naming Rights partners. Send introductory sales packages. Follow up on packages. Present to potential partners. Assist with contract development and negotiation. Finalize agreements. Assist in activation. Other services as requested.
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**EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT**

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$255,000 plus 10% of total amount of sponsorships and naming rights provided as set forth in Attachment 1 to Exhibit B.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on a monthly basis as well as a lump sum basis at the completion of the tasks, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.]
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job/Project Name
 - (2) CITY's current Purchase Order Number
 - (3) CONTRACTOR's Invoice Number
 - (4) Date of Invoice Issuance
 - (5) Work Order Number (if applicable)
 - (6) CITY representative identified on the Purchase Order
 - (7) CONTRACTOR's remit address for payment
 - (8) Description of services billed under Invoice
 - (9) Amount of Invoice (itemize all authorized Reimbursable Expenses)
 - (10) Total Billed to Date under Agreement
 - C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described above.

D. Submitting Invoices:

- (1) **Email.** Submit email invoices and any attachments to:

apinvoices@cityofsacramento.org

- (2) **Postal mail.** If emailing invoices and attachments is not an option, mail to:

A/P PROCESSING CENTER
CITY OF SACRAMENTO
915 I ST FL 4
SACRAMENTO CA 95814-2608

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

Attachment 1 to Exhibit B

COMPENSATION / FEES

a. Development of Presentation and Materials

- \$0

b. Fees and/or Retainer Services & c. Commission Structure

- Phase I Asset Inventory & Valuation
 - \$75,000 fee
- Phase II Sales Campaign
 - \$10,000/month;
 - Commission of 10% on all income from sponsorship and naming rights agreements procured by CONTRACTOR, for twenty (20) years or the initial term of the sponsorship or naming rights agreement, whichever is longer;
 - If a sponsorship or naming rights agreement is executed by CITY within the twelve (12) months following the expiration or termination as set forth in Section 5 of Exhibit A and in Section 9 of Exhibit D of this agreement, with any entity that was previously solicited by CONTRACTOR to become a sponsor or naming rights partner and with which CONTRACTOR had conducted good-faith discussions concerning the possibility of such party becoming a sponsor or naming rights partner, the CONTRACTOR shall still be entitled to the commission of 10% on all income from such sponsorship and naming rights agreement for twenty (20) years or the initial term of the sponsorship or naming rights agreement, whichever is longer; and
 - Up to 5% commission on any renewals of those sponsorship and naming rights agreement(s) after twenty (20) years or the initial term if longer, dependent upon the level of involvement of CONTRACTOR at the time of renewal.

This is group pricing and includes sales efforts for both the Memorial Auditorium, Community Center Theater, and Convention Center.

d. Reimbursable Expenses

- Pre-approved travel reimbursed at cost

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

_____ Not furnish any facilities or equipment for this Agreement;

or

X Furnish the following facilities or equipment for the Agreement [*list, if applicable*]:

The City shall provide access to the facilities of the Sacramento Convention Center Complex including the Sacramento Convention Center, Community Center Theater and Memorial Auditorium.

EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform

services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A

violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

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

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

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

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

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the CITY.

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

- A. Minimum Scope & Limits of Insurance Coverage
- (1) Commercial General Liability Insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities

performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors, products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors, and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than one million dollars (\$1,000,000) per accident. The policy shall provide coverage for owned, non-owned, and/or hired autos as appropriate to the operations of the CONTRACTOR.

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

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

- (3) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.

- (4) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers’ Compensation policy shall include a waiver of subrogation in favor of the CITY. If no work or services will be performed on or at CITY facilities or CITY Property, the CITY Representative may waive this requirement by selecting the option below:

Workers’ Compensation waiver of subrogation in favor of the CITY is not required. _____ (CITY Representative initials)

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

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

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

Is X Is not _____ [check one] required for this Agreement.

If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR, its sub-consultants, and subcontractors; products and completed operations of CONTRACTOR, its sub-consultants, and subcontractors; and premises owned, leased, or used by CONTRACTOR, its sub-consultants, and subcontractors.
- (2) Automobile Liability Insurance: The CITY, its officials, employees, and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

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

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

D. Acceptability of Insurance

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

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668

Insurance certificates also may be faxed to (888) 355-3599, or e-mailed to: certificates-sacramento@riskworks.com

- (3) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

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

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

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

all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

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

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

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

default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
 - A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for the Agreement.
20. **Local Business Enterprise Participation Requirements.** If the Request for Qualifications or Request for Proposals issued for this Agreement included Local Business Enterprise Participation Requirements (the "LBE Requirements"), CONTRACTOR shall comply with the LBE Requirements, which are by this reference incorporated as if set forth fully herein. The LBE Requirements also can be viewed at:
<http://www.cityofsacramento.org/Finance/Procurement/Standard-Agreements>