

CONTRACT FOR PROFESSIONAL SERVICES

City Department Community Planning and Economic Development

Contractor: Leo A Daly Company

Contractor Soc. Sec. No. or Federal ID No. 47-0363104

THIS AGREEMENT is made between the City of Minneapolis, Minnesota, a home rule charter city, hereinafter called the "CITY" and Leo A Daly Company, hereinafter called the "Contractor".

WHEREAS, the City did issue a request for proposals (RFP) to seek contractors to provide architectural, engineering and design services, construction document preparation and construction management services at the Target Center located in the City of Minneapolis; and

WHEREAS, the Contractor did submit a proposal to provide the services the City sought upon issuance of its RFP; and

WHEREAS, the City believes the Contractor is capable of providing the services sought by the City; and

WHEREAS, the City and the Contractor wish to define their rights and obligations in a written agreement.

In consideration of the following terms, conditions and mutual promises, the parties hereby agree as follows:

SECTION I – DEFINITIONS

The following capitalized terms and phrases shall have the meanings indicated below and as further explained or elaborated upon in the text of this Professional Services Agreement.

Agreement – means this professional services agreement between the City of Minneapolis and Leo A Daly Company.

Bidding or Negotiation Phase – means the advice, assistance, and services provided by the Contractor to the City in the identification of bidders, review of bids, making recommendations and selecting contractors to perform in accordance with a Scope of Work as more fully explained in this Agreement.

Capital Improvements and Capital Equipment – means any of the structural, mechanical, electrical, plumbing or other systems that are part of the Target Center and any fixtures or equipment that are either a part of or necessary to operate the improvements and systems which comprise the Target Center.

City – means the City of Minneapolis, a Minnesota municipal corporation operating under a charter and Code of Ordinances.

City Council – means the governing body of the City.

Code of Ordinances – means the City's code of ordinances as amended from time to time.

Construction Phase – means the review of the construction to be undertaken by contractors and subcontractors associated with a Scope of Work, the administration of the Construction Contract and the oversight of the contractors hired by the City to undertake a Scope of Work as more fully explained in this Agreement.

Contract Document Phase – means the preparation of documents, specifications and drawings, plans, schedules, cost amounts for Capital Improvements and Capital Equipment and for each Scope of Work as more fully explained in this Agreement.

Contractor – means Leo A Daly Company, a Nebraska corporation.

Deliverables – means the written documentation associated with a Phase or Scope of Work that is prepared by the Contractor and provided to the City, including but not limited to meeting minutes, reports, notes, plans, specifications and drawings, cost estimates, contracts and certifications.

Design Development Phase – means using information and data generated by and garnered from the Study and Schematic Design Phase, preparation of plans and specifications for the repair, demolition or replacement of Capital Improvements and Capital Equipment for a Scope of Work and cost estimates for the Scope of Work.

Manager – means Midwest Entertainment Group, LLC (MEG), the manager and operator of the Target Center or its successor or assign.

Minneapolis Community Development Agency (MCDA) – means a public body, corporate and politic and the owner of the Target Center.

Notice to Proceed – means an oral or written notice provided by the City to the Contractor which shall be authorization by the City to Contractor to proceed with a Phase or Scope of Work. A Notice to Proceed for a Scope of Work shall be in writing, but a Notice to Proceed with a Phase or for the Contractor to proceed and continue to the next Phase may be delivered orally.

Phase – means any of the phases defined herein including in chronological order for a given Scope of Work the (1) Study and Schematic Design Phase; (2) Design Development Phase; (3) Contract Document Phase; (4) Bidding or Negotiation Phase; and (5) Construction Phase.

Scope of Work – means an individual project to be undertaken at the Target Center for the repair or replacement of Capital Improvements and Capital Equipment or the general refurbishment or rehabilitation of the Target Center or any of its Capital Improvements or Capital Equipment elements or components.

Study and Schematic Design Phase – means the review of existing documents, the investigation and examination of Capital Improvements and Capital Equipment or other elements or components of the Target Center, meetings with Tenants and Users and the formulation of recommendations and preparation of plans, designs and cost estimates necessary to remedy a problem or repair or replace Capital Improvements or Capital Equipment as more fully explained in this Agreement.

Target Center – means the entertainment venue and arena located at 600 First Avenue North, Minneapolis, MN 55401, which was constructed in 1989 and owned, operated, and leased by the MCDA since 1995.

Tenant or User – means each lessee including but not limited to the Minnesota Timberwolves, Lifetime Fitness Club, NBA City and such other users or occupants of the Target Center through written agreement with the City or with MEG.

SECTION II – PURPOSE

The MCDA is the owner in fee title of the Target Center. The City has retained the services of the Manager to maintain, operate and book events and performances at the Target Center. From time to time the MCDA, City and Manager, or Tenants and Users of the Target Center, notice, request or indicate the need for repairs, replacement or upgrades of the Capital Improvements or Capital Equipment at the Target Center. The City requires the expertise and architectural, engineering, design and project management services that the Contractor is able to provide and deliver in order for the MCDA and the City to maintain the Target Center as a viable and competitive entertainment and performance venue. Therefore, the City and the Contractor wish to enter into this Agreement whereby the City will retain the Contractor to provide the Scope of Services indicated in Section III of this Agreement.

SECTION III – SCOPE OF SERVICES

The Contractor's Scope of Services shall generally involve the development of a Scope of Work for each individual project to be undertaken and completed at the Target Center. The Contractor shall assign its "Project Manager," Frank Anderson, AIA, to work with the City and MCDA staff, the management and operations representative, MEG, and various Tenants and Users.

The initial step in the development of the Scope of Work will be for the Contractor to conduct a preliminary investigation or study to identify the probable extent of work that will be involved to address or remedy the problem and include options that the MCDA may pursue to address the problem and meet the intended goals. The preliminary

study will also include an estimated schedule of time required to complete work and an estimate of the probable construction cost.

The City will then determine if the next step will be undertaken by the Contractor. The next step will be the Contractor's preparation of the actual Scope of Work involving from one to all of the Phases as identified and defined herein. A description of each Phase is described in this Section III of the Agreement as well as the Deliverables to be provided to the City during or at the conclusion of a Phase as determined by the City and the Contractor. The Contractor will monitor and update the Scope of Work during each Phase of the project.

A. Study and Schematic Design Phase

Description of Services:

- Conduct meetings with MCDA representatives and User groups and prepare and issue meeting notes
- Verify facility's existing conditions and existing documentation
- Validate and finalize space program
- Obtain MCDA approval of program
- Prepare schematic demolition plans, architectural floor plan, furniture fit plan and elevations, mechanical, electrical and technology systems plans
- Conduct code and life safety assessments
- Prepare schematic outline specification
- Prepare schematic cost estimate
- Obtain MCDA approval of schematic design

Deliverables:

- Meeting notes
- A set of interim review presentation documents for schematic design
- Sets of final written program
- Sets of final schematic drawings and cost estimate

Upon review of the Study and Schematic Design Phase Deliverables, the City and Contractor will determine whether to proceed into the Design Development Phase and the Construction Document Phase as more fully described below in this Section III of the Agreement.

B. Design Development Phase

Description of Services:

- Conduct review meetings with MCDA and City representatives of progress documents
- Design development demolition plans, code plan, architectural floor plan, reflected ceiling plan, space sections, furniture fit plan, mechanical, electrical and technology systems plans
- Design development specification

- Design development construction cost estimate
- Review documents with jurisdictional authorities
- Obtain City approval of design development

Deliverables:

- Meeting notes
- A set of interim review presentation documents for design development
- Sets of final design development drawings, specifications and cost estimate

C. Contract Document Phase

Description of Services:

- Prepare construction document demolition plans, code plan, architectural floor plan, reflected ceiling plan, space sections, details, opening schedules, mechanical HVAC and plumbing plans, fire sprinkler plan, details and schedules, electrical power, low voltage and lighting plans, technology plans, details and schedules
- Prepare construction document specifications
- Prepare construction document cost estimate
- Obtain City approval of construction documents

Deliverables:

- Sets of construction documents (drawings and specifications) and cost estimate for City's records

Upon the Contractor's completion and City's acceptance of the Deliverables from the Design Development Phase and the Contract Development Phase, the City will authorize the actual undertaking and construction of the project and authorize the Bidding or Negotiation Phase and the Construction Phase by providing notice to the Contractor as provided in Section IV, Performance of Scope of Work, of this Agreement.

D. Bidding or Negotiation Phase

Description of Services:

- Assist the City CPED representatives and identify potential qualified interested bidders
- Issue contract documents to potential bidders and plan rooms
- Assist City with selection of independent testing lab
- Conduct the pre-bid conference
- Respond to requests for information
- Prepare and issue addendum
- Review with City material substitutions
- Assist City with receipt of bids
- Prepare a bid tab
- Assist with negotiating revisions
- Review bids and make a recommendation to City

- Assist City with writing a construction contract

Deliverables:

- Addendum
- Bid tab
- Final bid review and recommendation
- Assist with the development of contract for construction

E. Construction Phase

Description of Services:

- Review and distribute contractors submittals for schedule, subcontractors, bonds, insurance and construction cost breakdown
- Convene pre-construction conference
- Review and process shop drawings, product data and samples
- Perform site observations during construction, review and monitor contractors progress
- Review test reports
- Respond in a timely manner (or respond within 24 hours) to requests for information from the contractor
- Attend construction meetings
- Process certificate for payments
- Conduct substantial completion inspection
- Issue certificate of substantial completion
- Review and distribute close-out documents
- Review final certificate for payment and lien waivers

Deliverables:

- Meeting minutes
- Certified pay applications
- Site observations notes
- Punch list
- Certificate of substantial completion
- Documents for City records

SECTION IV – PERFORMANCE OF SCOPE OF WORK

This Agreement shall not be construed as a guarantee to the Contractor of assignment of any number of Scope of Work projects under the Scope of Services or the guarantee of any total dollar amount of compensation.

Upon request by the City with respect to a specific Scope of Work project to be performed hereunder, the Contractor shall furnish the City with a written estimate of the number of hours to be billed for such project. Said estimate shall contain any other information the City may request. The City shall, in its sole discretion, determine the Scope of Work to be performed for a specific project.

The Contractor shall not undertake or provide any services prior to receiving a written Notice to Proceed as set forth in Schedule B attached hereto and incorporated herein, which will describe the services or work to be performed by the Contractor. No compensation will be paid for any work or services performed prior to the issuance of the Notice to Proceed. However, in the case of emergency or unusual time-constraining circumstances, the City may verbally authorize the Contractor to perform work hereunder prior to the issuance of the Notice to Proceed.

All services or work to be furnished or performed by the Contractor hereunder shall be furnished or performed as promptly as possible, after the Notice to Proceed is sent by the City to the Contractor and, in any event, within the time specified. It is understood that the time within which services or work is to be performed is of primary importance and of the essence. The performance of services or work required hereunder shall not relieve the Contractor from the obligation to correct any defective Construction Document work subsequently discovered, and all incomplete, inaccurate, or defective work shall be remedied by the Contractor on demand without cost to the City. The Contractor will proceed with a Phase or the work hereunder in such sequence and order as the City may, from time to time, request through the Notice to Proceed.

Both the City and the Contractor shall designate a representative to act on their respective behalf's regarding the work performance required by this Agreement. The City's representative shall examine the documents submitted by and the work performance of the Contractor's and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Contractor's services.

SECTION V – COMPENSATION

The Contractor shall be compensated as per the Contractor Compensation Rates attached hereto as Exhibit A. Exhibit A will be revised and updated by the City and the Contractor on the annual anniversary of this Agreement and any extension thereof.

The Contractor's direct costs for printing, photocopying, travel and transportation, postage and delivery service, and telephone and electronic communication are the "Reimbursable Expenses" of the Contractor. The Reimbursable Expenses of the Contractor shall also be revised and updated by the City and the Contractor on the annual anniversary of this Agreement and any extension thereof.

The total compensation for the Scope of Work at the Contractor Compensation Rates plus Reimbursable Expenses payable by the City to the Contractor over the Term of this Agreement, as indicated in Section VII of this Agreement, shall not exceed \$400,000.

The City will pay the Contractor within thirty (30) days net of receipt of the Contractor's invoice for Services provided; subject to the Contractor's compliance with the requirements in Section VI, Documentation of Work. The Contractor may submit invoices no more frequently than on a monthly basis for Services and Reimbursable Expenses.

The Contractor shall only be paid for work completed at the direction of the City's Department of Community Planning and Economic Development (CPED).

SECTION VI – DOCUMENTATION OF SCOPE OF SERVICES

The Contractor shall prepare a form of bill for services associated with each Scope of Work to be submitted to and approved by the City CPED representative prior to undertaking the initial Phase. Bills for services shall be in such form and level of detail to enable the City's CPED representative to determine the Phase and project Scope of Work associated with the bill for services. The Contractor will prepare a separate bill for services associated with each Scope of Work project.

SECTION VII – EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall be effective as of March 2, 2007, and continue through the two-year term ending on March 1, 2009, unless terminated earlier as provided in Section IX, Cancellation, Default and Remedies of this Agreement.

The City and the Contractor shall have the right, but not the obligation, to extend this Agreement for up to two (2) two-year terms, for a total duration of the Agreement of up to six years.

SECTION VIII – INSURANCE

Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Agreement and shall remain continuously in force for the duration of the Agreement.

The Contractor and its Contractors shall secure and maintain the following insurance:

- A. Workers Compensation Insurance. Insurance that meets the statutory obligations with Coverage B – Employers Liability limits of at least \$100,000 each accident, \$500,000 disease – policy limit and \$100,000 disease each employee.
- B. Commercial General Liability Insurance. Insurance with limits of at least \$1,000,000 general aggregate, \$1,000,000 products – completed operations \$1,000,000 personal and advertising injury, \$50,000 each occurrence fire damage and \$5,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage, and the City shall be named an additional insured.
- C. Commercial Automobile Liability Insurance. Insurance covering all owned, non-owned and hired automobiles with limits of at least \$500,000 per accident.
- D. Professional Liability Insurance or Errors & Omissions Insurance. Insurance providing coverage for (1) the claims that arise from the errors or omissions of

the Contractor or its subcontractors, and (2) the negligence or failure to render a professional service by the Contractor or its subcontractors. The insurance policy should provide coverage in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Certificate of Insurance. A 30-day written notice is required if the policy is canceled, not renewed or materially changed. The Contractor shall require any of its subcontractors, if subcontracting is allowable under this Agreement, to comply with these provisions.

SECTION IX – CANCELLATION, DEFAULT AND REMEDIES

The City may cancel this Agreement upon thirty (30) days written notice, except that if either party fails to fulfill its obligations under this Agreement in a proper and timely manner, or otherwise violates the terms of this Contract, either party shall have the right to terminate this Agreement, if the default has not been cured after a ten (10) days written notice has been provided.

If such termination shall be without cause, the City shall pay Contractor all compensation earned to the date of termination. If the termination shall be for breach of this Agreement by Contractor, the City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by the Contractor. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

SECTION X - NOTICES

Any notice or demand, authorized or required under this Agreement, shall be in writing and shall be sent by certified mail to the other party as follows:

TO CONTRACTOR: Leo A Daly Company
c/o Frank Anderson, Contract Manager
730 Second Avenue South, Suite 1100
Minneapolis, MN 55402

Phone: 612-338-8741

TO CITY:

City of Minneapolis
Department of Community Planning and
Economic Development
ATTN: Tom Daniel, City Department Contract Manager
105 Fifth Avenue South, Suite 200
Minneapolis, MN 55401
Phone: 612-673-5079

SECTION XI – RELATIONSHIP OF THE PARTIES

- A. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Agreement shall be considered employees or subcontractors of the Contractor only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Contractor.
- B. Hold Harmless. The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, to the extent the same resulted directly or indirectly from the negligent acts, errors or omissions of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the services pursuant to this Agreement or by reason of the failure of the Contractor to fully perform, in any respect, all of its obligations under this Agreement.

SECTION XII – ASSIGNMENT OF AGREEMENT; SUBCONTRACTING

- A. Transfer of Interest. The Contractor shall not delegate or assign any interest in the Agreement, and shall not transfer any interest in the same either by assignment or novation, without the prior written approval of the City, provided, however, that claims for money due or to income due to the Contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City.
- B. Subcontractors. The Contractor shall not subcontract any services under this Agreement without prior approval of the City.

SECTION XIII – GENERAL CONDITIONS

- A. Accounting Standards. The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by normally accepted accounting practices to properly account for expenses incurred under this Agreement.
- B. Retention of Records. The Contractor shall retain all records pertinent to expenditures incurred under this Agreement for a period of six years after the resolution of all audit findings.
- C. Disclosure. The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor will immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.
- D. Inspections. All Contractor records with respect to any matters covered by this Agreement shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
- E. Ownership of Materials. All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting in, from the Agreement, shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Agreement without the consent, permission of, or further compensation to the Contractor; provided, however, the Contractor will have no responsibility or liability in the event of such reuse, extension or enlargement of any such document by the City.
- F. Intellectual Property. The Parties agree that no intellectual property will arise from this Agreement. Notwithstanding the above, the City owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any Work created, in progress, produced or completed and paid by this Agreement. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under this Agreement will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Agreement. The Contractor represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

SECTION XIV- SPECIAL CITY CONDITIONS

The Contractor agrees to comply with the following City Ordinances and policies:

- A. Non-Discrimination. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements of the Minneapolis Code of Ordinances, Chapter 139.

- B. Compliance Requirements. All contractors hired by the City of Minneapolis are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Contractors associated with the City of Minneapolis to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on nondiscrimination. The above requirements also apply to the Minnesota Human Rights Act, Minn. Stat. Ch. 363A.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated, or suspended, in whole or part, and the Contractor may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

- C. Equal Opportunity Statement. Contractor agrees to comply with the provisions of all applicable federal, state, and City of Minneapolis statutes, ordinances, and regulations pertaining to civil rights and nondiscrimination including without

limitation Minnesota Statutes, Section 181.59 and Chapter 363A and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

- D. Billboard Advertising. Through Ordinance 109.470, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.
- E. Interest of Members of City. The Contractor agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Agreement.
- F. Conflict of Interest/Code of Ethics. By signing this Agreement, the Contractor agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the City. If the Contractor is unclear if a conflict of interest exists, the Contractor will immediately contact the City department contract manager and ask for an interpretation.

Contractor agrees to be bound by the City's Code of Ethics, Minneapolis Code of Ordinances, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Agreement have also complied with that Ordinance. It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Agreement. All questions relative to this section shall be referred to the City and shall be promptly answered.

- G. Living Wage Ordinance. The Contractor may be required to comply with the "Minneapolis Living Wage and Responsible Public Spending Ordinance, Chapter 38 of the City's Code of Ordinances (the "Ordinance"). Unless otherwise exempt from the Ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance's requirement that the Contractor and its subcontractors pay their employees a "living wage" as defined and provided for in the Ordinance.
- H. Equal Benefits Ordinance. Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each Contractor and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance, that exceeds \$100,000 per calendar year. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the contract does exceed \$100,000, the ordinance will then apply to the contract. A complete text of the ordinance is available at:

http://www.ci.minneapolis.mn.us/procurement/docs/equal_benefits_ordinance.pdf (pdf). It is the Contractor's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

- I. Small & Underutilized Business Program (SUBP) Requirements. Contractor must comply with the Small & Underutilized Business Enterprise Program (SUBP), as detailed in Chapter 423 of the Minneapolis Code of Ordinances. The SUBP Ordinance applies to any construction/development project in excess of one hundred thousand dollars (\$100,000) and any contract for the provision of goods and services in excess of fifty thousand dollars (\$50,000). Should the respondent find an opportunity to contract with other business concerns to complete portions of the task solicited, we ask that they would entertain contracts with businesses owned by women or minority persons.

SECTION XV – INTERPRETATION OF AGREEMENT

- A. General Compliance. The Contractor agrees to comply with all applicable Federal, State, and local laws and regulations governing funds provided under this Agreement.
- B. Applicable Law. The laws of the State of Minnesota shall govern all interpretations of this Agreement; and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence, or incorporation of the Contractor.
- C. Conflict and Priority. In the event that a material conflict is found between provisions in this Agreement, the Contractor's Proposal or the City's Request For Proposals, the provisions in the following rank order shall take precedence: 1) Agreement; 2) Proposal; and last 3) Request For Proposals.
- D. Modification of Agreement. Any modification or amendment of this Agreement shall only be by written agreement, mutually agreed to and signed by the City and Contractor.
- E. Word Usage. Any terms and words used in this Agreement shall be interpreted to include singular and plural and present, past or future tenses as the circumstances may reasonably dictate.

[Signature page follows.]

IN WITNESS WHEREOF, said Contractor and said City have caused this Agreement to be executed in their behalf respectively by their proper officers as follows:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

FOR THE CONTRACTOR

FOR THE CITY

Leo A Daly Company

Approved as to Form

By Charles M. Ault
CHARLES M. AULT
By MANAGING PRINCIPAL

By: Mary Winters
Assistant City Attorney

Dated: MARCH 1, 2007

Approved Cliff T. Ludy
Department Head responsible for Contract
Monitoring for this contract

Countersigned: Pam Fernandez
Finance Officer Designee 03-19-07

STATE OF Minnesota
) ss
COUNTY OF Persepolis

This instrument was acknowledged before me on March 1, 2007 by
(Date)
Charles M. Ault as Managing Principal and
(Printed Name) (Title)

_____ as _____
(Printed Name) (Title)
of Leo A Daly Company
(Corporation Name if corporation)

Carolyn J. Kowalski
Notary Public

