

2005-25905
5/18/05 - R 7H

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND
THE SUPERLATIVE GROUP, INC.
FOR PHASE I PROFESSIONAL SERVICES
IN CORPORATE SPONSORSHIP MARKETING**

THIS AGREEMENT made and entered into this 22nd day of March, 2007, by and between the **CITY OF MIAMI BEACH, FLORIDA** (hereinafter referred to as City), a municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **THE SUPERLATIVE GROUP, INC.** (hereinafter referred to as Consultant), an Ohio corporation, having its principal office at 2706 Franklin Boulevard, Cleveland, Ohio 44113.

**SECTION 1
DEFINITIONS**

Agreement:	This Agreement between the City and Consultant.
City Manager:	The Chief Administrative Officer of the City.
Consultant:	For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.
Services:	All services, work and actions by the Consultant performed pursuant to or undertaken under this Agreement, as described in Section 2.
Fee:	Amount paid to the Consultant to cover the costs of the Services.
Risk Manager:	The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139, telephone number (305) 673-7000, Ext. 6435, and fax number (305) 673-7023.

Proposal

Documents: "Proposal Documents" shall mean City Request for Proposals, No. 06-04/05 for the Development and Implementation of a Citywide Corporate Marketing and Sponsorship Program, together with all amendments thereto by the City issued in contemplation of this Agreement, and the Consultant's proposal in response thereto (Proposal Documents), all of which are incorporated by reference hereto and made a part hereof; provided, however, that in the event of a conflict between the Proposal Documents and this Agreement, the terms of this Agreement shall supercede and prevail.

SECTION 2 **SCOPE OF WORK**

The Consultant agrees to provide the City with the following services (collectively, the Services):

2.1 Phase I Services:

In Phase I, the Consultant will research, write and deliver to the City three reports with the goal of enabling the City to determine whether it might profitably and appropriately operate a Corporate Sponsorship Program. The three deliverables are:

- 1) Marketing Asset Inventory and Valuation: A written inventory of existing and prospective tangible and non-tangible marketing assets, including an estimate of their potential sponsorship financial value;
- 2) Comprehensive Sponsorship Policy: A written policy reflecting recent municipal corporate sponsorship policy guidelines employed by cities in the U. S. with corporate sponsorship marketing potentials similar to those of the City of Miami Beach.
- 3) Strategic Plan for Marketing Assets: A written plan for maximizing the corporate sponsorship potential of City of Miami Beach assets through

marketing of those assets.

2.2 Objective 1: Inventory and Valuation of Existing and Prospective Tangible and Non-tangible Marketing Assets.

The inventory should include, but not be limited to:

1. On-site visitations and interviews of City department heads and other personnel, as may be deemed necessary by the City Manager or his designee, in his or her reasonable discretion or determination, as a planning step to understanding the existing marketing and sponsorship activity level.

These visitations/interviews will include, but not be limited to, supervisory City personnel responsible for:

- Building Department
- City-owned Marinas
- Children's Affairs
- Tourism & Cultural Affairs
- Community Development
- Economic Development
- Historic Preservation
- Finance Department
- Fire Department
- Information Technology
- The Mayor and Members of the City Commission
- Office of Budget & Performance Improvement
- Parking Department
- Police Department
- Parks & Recreation Department
- Planning Department
- Procurement Division
- Sanitation Department
- City-owned visitor and convention, entertainment and cultural facilities including, without limitation, the Miami Beach Convention Center, the

Jackie Gleason Center of the Performing Arts, the Bass Museum, the Colony Theater, the Byron Carlyle Theater, the Miami Beach Botanical Garden.

The objective of these visitations/interviews would be to gain an understanding of the aforesaid respected City department and division goals, plans, commitments, resources and all other data required to prepare a Sponsorship Marketing Asset Inventory and Valuation. Such data will be consolidated into a spreadsheet format to provide a comprehensive asset database.

With approval of and direction from the City Manager and/or his designee, the Consultant will also visit/interview outside organizations and businesses whose activities impinge on the overall success of the City.

These include, but are not limited to:

- Health agencies & Hospitals
- Beach Concessionaires
- Other Vending Concessionaires
- County and State Department of Transportation
- Entertainment and Cultural Facilities within the City (such as the Wolfsonian Museum, The Bass Museum, the Lincoln Theater, the Miami City Ballet, New World Symphony, and the Ziff Jewish Museum)
- Miami Beach Golf Courses
- Miami Beach Tennis Facilities
- City of Miami Beach Government Access Cable TV Station

The Consultant also will review all contracts for special events (as further outlined in the Proposal Documents.)

The Consultant will also educate City personnel and contractors and consultants regarding the potential of the corporate sponsorship program to enhance the City of Miami Beach brand, to strengthen the City's economic base, and to attract additional revenue(s).

2. Examination of any current City asset management agreements, including but not limited to agreements for:
 - a. Beach Concessions;

- b. Golf Courses;
 - c. Vending Machines;
 - d. Tennis Centers;
 - e. Jackie Gleason Theater of the Performing Arts; and
 - f. Miami Beach Convention Center.
3. Examination of City marketing materials and other information on past sponsorship efforts, and the level of success.
 4. Provide a deliverable list of practical licensing opportunities for the City of Miami Beach.
 5. Add/suggest to the City other sponsorship opportunities.
 6. Organize all data collected into a database (e.g., spreadsheet format or other user-friendly format). Examples of data collected are as follows:
 - Inventory Item Category (advertising, event, preferred vendor, capital project, naming rights, etc.);
 - Address/physical location, description, date added to the database, utilization statistics;
 - Pedestrian, vehicular, viewership or other relevant exposure data;
 - Marketing opportunity available (advertising, branding, promotion, etc.);
 - Rights available, date available, etc.;
 - Any sales history (to whom, what price, when, etc.);
 - Any known conflicts/limitations on selling;
 - Contact address, phone fax and e-mail;
 - Terms (length, price, options to renew);
 - Rights granted;

- Any encumbered reversionary rights;
- Legal/policy limitations on rights;
- Suggested pricing;
- Assessment of the value range for assets;
- Suggested/possible bundling opportunities with other assets;
- Assessment of the degree of difficulty to obtain a sponsorship agreement; and
- Indication of priority.

2.3 Objective 2: Create a Comprehensive Sponsorship Policy

Write a comprehensive Corporate Sponsorship Policy tailored to the City of Miami Beach and reflecting industry state-of-the-art “best practices.” This document will include examples of how other cities have developed similar programs and the results achieved Consultant shall:

- 1) Review current sponsorship acceptance procedures.
- 2) Participate in and support process to match community/City Commission Expectations, and community sensitivities to possible sponsorship opportunities.
- 3) Specify the approach to be used to address the expected sponsorship opportunities.
- 4) Specify how the policy would address or impact existing financial planning and economic development for the City.
- 5) Submit draft policy. Present/discuss developing policy as directed by City.
- 6) Identify any conflicts and/or limitations of applicable City of Miami Beach Charter and Code provisions,(vis-à-vis implementation of a Corporate Sponsorship Program).

2.4 Objective 3: Develop Strategic Plan for Marketing Assets

Write a Strategic Plan for marketing of City of Miami Beach assets identified and

evaluated through Objectives 1 and 2 hereof. This report will include, but not be limited to the following:

- 1) Prioritize the database.
- 2) Develop a written strategy document.
- 3) Assess the City's potential and recommend process/policy to earn income from Product Licensing Agreements.
- 4) Assess "Partner Designation/Use of Logo" opportunities.
- 5) Assess "Product Category Exclusivity".
- 6) Identify "Cost Reduction Opportunities" for items currently purchased by the City of Miami Beach.
- 7) Assess the City's "Licensing" potential by conducting a brand review and assessment, including an analysis of target categories and sub-categories provision of a licensing marketing plan, if such potential is found to exist.

SECTION 3

COMPENSATION

3.1 FIXED FEE

Consultant shall be paid a fixed fee of \$39,000, for the Services as set forth in Section 2 which Services shall be undertaken and completed in accordance with the timelines set forth in Section 4.5 hereof. Said fixed fee of \$39,000, shall be paid as follows:

- a. \$26,500 upon satisfactory completion and delivery of the Marketable Asset Database as described in Section 2.2 hereof, including a financial valuation of enumerated assets.
- b. \$4,000 upon satisfactory completion and delivery of a Corporate Sponsorship Policy as described in Section 2.3 hereof.
- c. \$8,500 upon satisfactory completion and delivery of a Strategic Marketing Plan as described in Section 2.4 hereof.

Travel expenses will be limited to a not to exceed reimbursable amount of

\$7,500 for the entire term of this Agreement. Consultant shall provide City with receipts and expense reports.

The parties further acknowledge and agree that, upon satisfactory completion and delivery of the Services, as set forth herein, the City shall have no obligation to proceed with Consultant, and/or otherwise retain Consultant, for Phase II services, if any. Accordingly, the City shall have no liability to Consultant should it decide, at its sole discretion and election, not to proceed.

Notwithstanding the preceding paragraph, in the event City and Consultant negotiate and enter into a separate agreement, or duly approved and executed amendment to this Agreement, for the provision of Phase II services, then Consultant agrees to refund the City 50% of all fees paid to Consultant, or \$19,500; said reimbursement amount to be paid to the City from commissions earned on the first \$2-million dollars worth of sponsorship sales on behalf of the City.

3.2 INVOICING

Consultant shall submit an invoice, which includes the purchase order number and a detailed description of the Services provided.

3.3 METHOD OF PAYMENT

Upon review of approval of Consultant's invoice by the City, payments shall be made for Services satisfactorily rendered within thirty (30) days of the City's receipt of same. Consultant shall mail all invoices to:

City of Miami Beach
Accounts Payable
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

SECTION 4

GENERAL PROVISIONS

4.1 RESPONSIBILITY OF THE CONSULTANT

With respect to the performance of the Services, the Consultant shall exercise that degree of skill, care, efficiency and diligence normally exercised by recognized professionals with respect to the performance of comparable services. In its performance of the Services, the Consultant shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, State of Florida, and Federal Government.

4.2 RESPONSIBILITY OF CITY

The City's cooperation will, at a minimum, consist of the following:

- a) Designation of an individual who shall serve as the contact person between Consultant and the City, and who shall serve as the City's project manager for this Agreement.
- b) Coordinating and providing reasonable access to relevant City personnel.
- c) Coordinating and providing reasonable access to relevant City documents, including asset management agreements, marketing materials, and historical and financial information.

4.3 PUBLIC ENTITY CRIMES

A State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes shall be filed with the City's Procurement Division, prior to commencement of the Services herein.

4.4 DURATION AND EXTENT OF AGREEMENT TERM

The term of this Agreement shall be for a period of one-year commencing on the last date of execution of the Agreement by the parties hereto.

4.5 TIME OF COMPLETION

Notwithstanding the term in Section 4.4 above, the Services to be rendered by the Consultant shall be commenced upon receipt of a written Notice to Proceed from the City (which notice shall be issued as soon as reasonably practicable following execution of the Agreement by the parties hereto) and, thereafter, Consultant shall diligently prosecute and complete the Services in accordance with the Timetable below.

The City recognizes that the nature of the Consultant's information gathering process and shall support the simultaneous preparation of all three deliverables:

- a.) Objective 1: Completion and delivery within 6-months of Notice to Proceed.
- b.) Objective 2: Completion and delivery within 8-months of Notice to Proceed.
- c.) Objective 3: Completion and delivery within 10-months of Notice to Proceed.

4.6 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its employees, agents, sub-consultants, or any other person or entity acting under Consultant's control, in connection with the Consultant's performance of the Services pursuant to this Agreement; and to that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the Consultant for performance of the Services under this Agreement is the specific consideration from the City to the

Consultant for the Consultant's Indemnity Agreement.

The Consultant's obligation under this Subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

4.7 TERMINATION, SUSPENSION AND SANCTIONS

4.7.1 Termination for Cause

If the Consultant shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant in writing of its violation of the particular terms of this Agreement and shall grant Consultant seven (7) days to cure such default. If such default remains uncured after seven (7) days, the City, upon three (3) days' notice to Consultant, may terminate this Agreement and the City shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement, except for amounts due and owing to Consultant for work deemed by the City to have been completed satisfactorily before the effective date of termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

4.7.2 Termination for Convenience of City

Notwithstanding Section 4.7.1, the City may also, for its convenience and without cause, terminate at any time during the term hereof by giving written notice to Consultant of such termination, which shall become effective seven (7) days following receipt by the Consultant of the written termination notice. In that event, all finished or unfinished documents and other materials, as contemplated in Section 2, shall be properly assembled and delivered to the City, at Consultant's sole cost and expense. If the Agreement is terminated by the City as provided in this subsection, Consultant shall be paid for any Services satisfactorily performed, as determined by the City at its discretion, up to the date of the termination. Provided, however, that as a condition precedent to such payment, consultant shall have delivered any and all documents, materials, etc. to the City as required herein.

4.7.3 Termination for Insolvency

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 4.7.2.

4.7.4 Sanctions for Noncompliance with Nondiscrimination Provisions

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as the City, Miami-Dade County, and / or the State of Florida, as applicable, may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies and/or cancellation, termination or suspension of the Agreement. In the event the City cancels or terminates the Agreement pursuant to this Subsection the rights and obligations of the parties shall be the same as provided in Section 4.7.2.

4.8 CHANGES AND ADDITIONS

Changes and additions to the Agreement shall be directed by a written amendment signed by the duly authorized representatives of the City and Consultant. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City.

4.9 OWNERSHIP OF DOCUMENTS

All documents prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein, and are intended or represented for ownership by the City. Any reuse, distribution, or dissemination of same by Consultant, other than to the City, shall first be approved in writing by the City.

4.10 INSURANCE REQUIREMENTS

The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager. The Consultant shall maintain and carry in full force during the term of this Agreement the following insurance:

1. Consultant General Liability in the amount of \$1,000,000.
2. Consultant Professional Liability in the amount of \$200,000.
3. Workers Compensation & Employers Liability as required pursuant to Florida statute.
4. The insurance must be furnished by insurance companies authorized to do business in the State of Florida and approved by the City's Risk Manager.
5. Original certificates of insurance for the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing. These certificates will be kept on file in the office of the Risk Manager, 3rd Floor, City Hall.
6. The Consultant is solely responsible for obtaining and submitting all insurance certificates for its sub-consultants.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less

than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the City shall have the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required overage.

4.10.1 Endorsements

All of Consultant's certificates, above, shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy.

4.10.2 Certificates

Unless directed by the City otherwise, the Consultant shall not commence any services pursuant to this Agreement until the City has received and approved, in writing, certificates of insurance showing that the requirements of this Section (in its entirety) have been met and provided for.

4.11 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

The Consultant shall not subcontract, assign, or transfer any work under this Agreement in whole or in part, without the prior written consent of the City.

4.12 SUB-CONTRACTORS

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-contractors, and any other person or entity acting under the direction or control of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-contractors and any other person or

entity acting under the direction or control of Consultant. All sub-contractors must be approved in writing by the City prior to their engagement by Consultant.

4.13 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, physical handicap, or sexual orientation. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, disability, or sexual orientation.

4.14 CONFLICT OF INTEREST

The Consultant agrees to adhere to and be governed by the Metropolitan Miami-Dade County Conflict of Interest Ordinance (No. 72-82), as some may be amended from time to time; and by the City of Miami Beach Charter and Code, as some may be amended from time to time; all of which are incorporated by reference hereto as if fully set forth herein.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

4.15 PATENT RIGHTS; COPYRIGHTS; CONFIDENTIAL FINDINGS

Any patentable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, shall be made available to the City for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for copyright or patent by or on behalf of the Consultant or its employees or sub-contractors, without the prior written consent of the City.

4.16 NOTICES

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT: The Superlative Group, Inc.
Attn: Myles Gallagher, President
2706 Franklin Boulevard
Cleveland, Ohio 44113
(216) 592-9400

TO CITY: City of Miami Beach
Attn: Hilda Fernandez
Assistant City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7490

With copies to:

City of Miami Beach
Communications Office
Attn: Jay Moore
1700 Convention Center Drive

Miami Beach, FL 33139

(305) 673-7575

Notices hereunder shall be effective:

If delivered personally, on delivery; if mailed to an address in the city of dispatch, on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

4.17 LITIGATION JURISDICTION/VENUE

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

4.18 ENTIRETY OF AGREEMENT

This writing and the Services embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superceded hereby. The Services and the Proposal Documents are hereby incorporated by reference into this Agreement.

4.19 LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement,

Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$1,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: 
City Clerk


Mayor

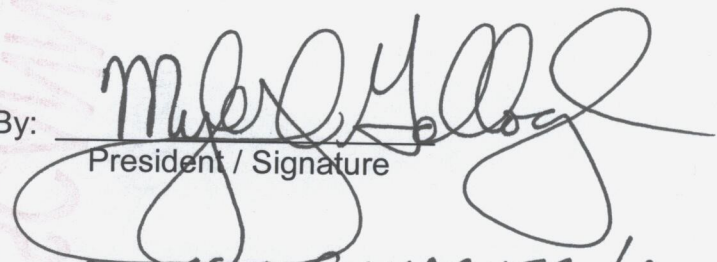
FOR CONSULTANT:

SUPERLATIVE GROUP, INC.

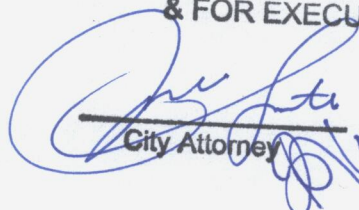
ATTEST:

By: _____
Secretary / Signature

Print Name / Title

By: 
President / Signature
MYLES C. GALLAGHER / President
Print Name / Title

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 4/16/07
City Attorney Date