

**Administrative Rules, Regulations, Policies & Procedures of the
Department of Finance and Administrative Services**

**Rules & Procedures Regarding
City Contracts – Non-Discrimination in Benefits
(“Equal Benefits Program Rules”)**

Effective Date: June 22, 2000

TABLE OF CONTENTS

Section 1 Purpose

Section 2 Organizations Affected

Section 3 References

Section 4 Policy

Section 5 Definitions

Section 6 Jurisdiction

Section 7 Effective Date

Section 8 Covered Entity

Section 9 Covered Benefits

Section 10 Employee Benefits Policies – Options for Compliance

Section 11 Requirement of a Cash Equivalent Payment

Section 12 Non-Discriminatory Discrepancies in Benefits

Section 13 Waivers

Section 14 Sanctions and Remedies

Section 15 Internal Domestic Partnership Registry

**City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”**

[Section 16 Verification of a Domestic Partnership or Marriage](#)

[Section 17 Excess Costs](#)

[Section 18 Taxation](#)

[Section 19 Notification](#)

[Section 20 Continuation Coverage](#)

[Section 21 Application to Small Works and Other Roster Programs](#)

[Section 22 Investigative Authority](#)

[Section 23 Registering a Complaint of Non-Compliance](#)

[Section 24 Legislative Authority](#)

[Section 25 Appendices](#)

1 PURPOSE

These rules are intended to:

Establish uniform rules and procedures for implementing the provisions of Seattle Municipal Code Chapter 20.45 requiring certain City Contractors to provide the same or equivalent benefits to employees with spouses and employees with domestic partners and to the spouses and domestic partners of employees; and

Create an implementation plan designed to provide clear guidance to entities seeking to comply with the law.

2 ORGANIZATIONS AFFECTED

All City departments, offices, commissions, boards or other agencies authorized to enter into or to administer contracts on behalf of the City.

3 REFERENCES

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

- 3.1 Seattle Municipal Code (SMC) Chapter 20.45, City Contracts – Non-Discrimination in Benefits.
- 3.2 SMC Chapter 3.02, the Administrative Code of The City of Seattle.

4 POLICY

- 4.1 No Contract Awarding Authority shall execute a contract with a Contractor unless such Contractor has agreed that the Contractor will not discriminate in the provision of employee benefits as provided for in SMC Ch. 20.45 and these rules and procedures.
- 4.2 All contracts awarded by the City and covered by SMC Ch. 20.45 shall contain provisions developed by the Department of Finance and Administrative Services prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by SMC 20.45.040, except as exempted by this chapter or these rules or procedures.
- 4.3 These rules and procedures are intended to provide the Department of Finance and Administrative Services (FAS) with guidelines for implementing the requirements such that the City can provide clarification and assistance to businesses in learning about these emerging concepts of equality in employment and such that businesses are encouraged to provide equal benefits. Concurrently, the rules and procedures are intended to provide FAS with guidelines for implementing the requirements such that the City continues to be able to purchase necessary goods and services to conduct its business.

5 DEFINITIONS

- 5.1 Department. “Department” or “FAS” means the Department of Finance and Administrative Services, unless otherwise specified.
- 5.2 Director. "Director" means the Director of the Department of Finance and Administrative Services, or the Director's designee.
- 5.3 Contract. "Contract" means a contract for public works, consulting services as set forth in SMC 3.114.010, or supplies, material, equipment or services as set forth in SMC 3.18.800 et seq., estimated to cost Thirty Three Thousand Dollars (\$33,000.00) or more in 2000, consistent with the competitive threshold

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

requirements of, and as adjusted pursuant to, Seattle Municipal Code 3.18.840 and 3.114.140.

- 5.4 Contract Awarding Authority. "Contract awarding authority" means the City officer, department, commission, employee, board, or other City governmental unit authorized to enter into or to administer contracts on behalf of the City. In many cases, the Contract Awarding Authority is the Department of Finance and Administrative Services.
- 5.5 Contractor. "Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, including a "vendor" or a "consultant", who submits a bid, proposal, and/or enters into a Contract with a Contract Awarding Authority.
- 5.6 Domestic Partner. "Domestic Partner" means any person who is registered with his/her employer as a Domestic Partner or, in the absence of such employer-provided registry, is registered as a Domestic Partner with a governmental body pursuant to any state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by the Department and as specified herein.¹

Comment: An employer may not use criteria that are more restrictive than those used in the Affidavit of Domestic Partnership (See attached). For example, a more restrictive requirement for domestic partnership would be one that requires an employee to wait six (6) months (instead of ninety (90) days--the required waiting period for re-marriage) from the termination of a Domestic Partnership before filing another Affidavit of Domestic Partnership.

- 5.7 Employee Benefits. "Employee Benefits" or "Benefits" means any plan, program or policy provided by a Contractor to its employees as part of the employer's total compensation package. "Employee Benefits" includes, but is not limited to: pension and retirement benefits; medical, dental and vision plans or other health benefits; bereavement, family medical, parental and other leave policies; disability, life, and other types of insurance; employee assistance programs; memberships or discounts; moving expenses; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit sharing plans and other

¹ See attached: *Affidavit of Domestic Partnership*. This Affidavit includes criteria that have gained general acceptance from insurance providers and is a good model for employers to refer to when drafting their own domestic partner registry.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

compensation programs; vacation; travel benefits; and any other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of these rules to such benefits may be preempted by federal or state law.²

- 5.8 Non-discrimination in Benefits. “Non-discrimination in Benefits” means the provision of the same or equivalent benefits to employees with spouses and employees with domestic partners, to spouses of employees and domestic partners of employees, and to dependents and family members of spouses and dependents and family members of domestic partners. Non-discrimination in Benefits is further defined by SMC Ch. 20.45 and elsewhere within these rules. Non-discrimination in Benefits is also referred to as provision, or implementation, of “equal benefits” elsewhere within these rules.

*Comment: All of the examples below describe employer benefits policies that are in compliance with SMC Ch. 20.45. The standard measure of a non-discriminatory benefits policy is **parity**---benefits offered to one group (employees’ spouses), must be offered, on equal terms, to the other group (employees’ domestic partners):*

- 1) FAMILY LEAVE: *Company Q does not offer any healthcare benefits to its employees. The company does allow married employees: time off to care for a sick spouse; family leave to care for the children of his/her spouse (i.e. employee’s step-children); bereavement leave upon the death of a family member (including persons related by marriage). Company Q allows the same leave time, on the same terms (i.e. paid or unpaid), for employees with domestic partners. Married employees and employees with domestic partners are equally informed of the availability of this leave time.*
- 2) ACCESS TO INSURANCE: *Company Y offers healthcare benefits to its employees. Spouses of employees are eligible to enroll in the insurance plan but they must pay 100% of the extra premium cost. Domestic partners of employees are also eligible to enroll in the insurance plan and they are required to pay 100% of the extra premium cost. (Note: If the extra premium cost were shared between Company Y and the employee spouse, the same terms must be offered to the employee’s domestic partner.*
- 3) NO BENEFITS: *Company X is small and cannot afford to offer any benefits to its employees, married or otherwise. This policy is in compliance with SMC Ch. 20.45 in that there is parity between employees with spouses and employees with domestic partners.*
- 4) NO BENEFITS TO SPOUSES OF EMPLOYEES: *Company Z provides to its employees: travel stipends, medical and dental insurance coverage, gym*

² See Section 9: Covered Benefits.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

membership, relocation expenses, and discounts on Company Z merchandise. No benefits are available for the spouses or domestic partners of its employees. This policy is in compliance with SMC Ch. 20.45 in that there is parity between employees with spouses and employees with domestic partners.

- 5.9 Cash Equivalent Payment. "Cash Equivalent Payment" means the amount of money paid to an employee by a Contractor who, despite taking all reasonable measures, is unable to end discrimination in benefits.
- 5.10 Roster. "Roster" means a roster of qualified consultants maintained by the City as provided for in SMC 3.114.160 and any public works or other roster of qualified Contractors maintained by the City or utilized by the City pursuant to a cooperative agreement with any other state or local agency.

6 JURISDICTION

- 6.1 Subcontracts and Subcontractors. The Non-discrimination in Benefits requirement does not apply to subcontracts or subcontractors.
- 6.2 Location. The Non-discrimination in Benefits requirement applies to a Contractor in all of its operations located:
 - 6.2.1 within the City of Seattle;
 - 6.2.2 on real property outside of the City if the property is owned by the City or if the City has a right to occupy the property, and if the Contractor's presence at that location is connected to a Contract with the City; and
 - 6.2.3 elsewhere in the United States where work relating to a City Contract is being performed.

Comment: The following is an example of how SMC Ch. 20.45 applies to companies that have several different locations: Company B has offices in Seattle, Boston, and Nashville. Company B enters into a consultant Contract with the City, with all of the consulting work to be performed in its Nashville office. Under its Contract with the City, Company B must practice non-discrimination in benefits in both its Seattle and Nashville offices, but is not obligated to do so in its Boston office.

- 6.3 Nothing in this section shall preclude a Contractor from ending discrimination in benefits throughout its U.S. operations. The City encourages Contractors to end discrimination in benefits

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

throughout their U.S. operations and commends Contractors that do so.

7 **EFFECTIVE DATE**

These rules and procedures shall apply to any Contract awarded on or after September 30, 2000. They shall not apply to amendments to contracts awarded prior to September 30, 2000, except that the amendment process shall not be used for the purpose of evading the requirements of SMC Ch. 20.45 or these provisions.

8 **COVERED ENTITY**

The entity that enters into a Contract with the City is the entity that must comply with SMC Ch. 20.45. Separate corporate entities, including parents and subsidiaries of the entity that Contracts with the City, are not required to comply with SMC Ch. 20.45. In the case of a joint venture, all joint venture members are required to comply with SMC Ch. 20.45.

9 **COVERED BENEFITS**

A Contractor must end discrimination in all benefits offered to spouses or domestic partners of employees and in all benefits offered to employees because they have a spouse or domestic partner.

9.1 Employee benefits covered by the federal Employment Retirement Income Security Act of 1974 (“ERISA”) and provided through ERISA plans must be offered on a non-discriminatory basis under SMC Ch. 20.45. ERISA-covered benefits include benefits provided under employee welfare plans (such as medical insurance) and employee pension plans.

9.1.1 Exception: If a Contractor demonstrates that, with respect to a particular Contract, the City is exercising more power in the marketplace than an ordinary consumer of the goods or services at issue in the Contract, then the Contractor may exclude ERISA-covered benefits from their list of benefits offered on a non-discriminatory basis.

9.1.2 Procedure: The Contractor is responsible for raising this issue with the Director and must submit documentation to the Director that supports its claim of limited application. The Director may supply a form for this purpose.³ The Director shall make the final determination as to which

³See Form CSD EB-6: *Claim of Limited Application (SMC Ch. 20.45)*.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

benefits must be offered on a non-discriminatory basis. This determination shall be required before the Contractor enters into each individual Contract.

Comment: In essence, to support its claim of limited application, the Contractor must demonstrate that the City exerts a monopolistic hold over the sector of the marketplace at issue in the Contract. An example of this might be if the City owned the only regional airport and the Contractor was an Airline.

10 EMPLOYEE BENEFITS POLICIES – OPTIONS FOR COMPLIANCE

Provided that a Contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, the following employee benefits policies are in compliance with the requirements of SMC Ch. 20.45:

- 10.1 The Contractor provides benefits to individuals in addition to employees' spouses and employees' domestic partners; or
- 10.2 The Contractor provides benefits on a basis independent of marital or domestic partner status by allowing all employees to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or
- 10.3 The Contractor provides benefits neither to employees' spouses nor to employees' domestic partners.

Comment: 1) Under Section 10.1, a Contractor who provides equal benefits to employees with spouses and employees with Domestic Partners may elect to also provide coverage for additional individuals. For example, Bank of America has a policy that, in addition to spouses and domestic partners, extends some benefits to “other individuals if the relationship with [the employee] is especially close and it would be normal for them to turn to [the employee] for assistance.” 2) Under Section 10.2, a Contractor may elect to provide benefits on a basis unrelated to marital and domestic partner status. For example: ABC Service Provider is a faith-based organization that objects to administering benefits based on domestic partner status. In order to comply with SMC Ch. 20.45, the Contractor may choose to allow ALL employees to designate a member of their household as a recipient of benefits.

11 REQUIREMENT OF A CASH EQUIVALENT PAYMENT

Where a Contractor, despite taking all reasonable measures, is unable to end discrimination in benefits by the date of the Contract and, further, does not

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

anticipate being able to end discrimination in benefits at any time during the term of the Contract, the Contractor must provide to employees with a Domestic Partner a Cash Equivalent Payment.⁴ The Cash Equivalent Payment shall be the amount of money paid by the Contractor for the benefit given to a similarly situated employee. To the extent that a Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent Payment may be similarly limited. The Cash Equivalent Payment shall be made either on the same schedule as the City Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent Payment will be required where making such a payment would violate federal or state law.

Comment: 1) *The following scenarios are provided as examples of Cash Equivalent Payments for similarly situated employees:*

- (i) Company Q provides health insurance coverage for its employees, including spousal coverage for married employees. Insurance coverage for an unmarried employee costs Company Q \$100/month. Insurance coverage for a married employee whose spouse is also covered by the plan costs Company X \$150/month. The Cash Equivalent Payment amount due to an employee with a domestic partner is \$50/month.*
- (ii) Company Z has locations in Dallas, TX and Bridgeport, CT, and offers spousal health insurance to its employees in both locations. Company Z is doing business with the City of Seattle such that they are required to comply with SMC Ch. 20.45 in both locations. After taking all reasonable measures, Company Z is still unable to provide health insurance for the domestic partners of its employees in both locations. The Cash Equivalent Payment amount owed to eligible employees is calculated by comparing Company Z's insurance costs within a single location (i.e. either Bridgeport or Dallas). Therefore, the Cash Equivalent Payment Company Z would pay to its Bridgeport employees would be the difference between the cost of insurance in Bridgeport for an unmarried employee and a married employee whose spouse is also covered; similarly, the Cash Equivalent Payment Company Z would pay to its Dallas employees would be the difference between the cost of insurance in Dallas for an unmarried employee and a married employee whose spouse is also covered.*

⁴ See Form CSD EB-3: *Reasonable Measures Authorization*. The City shall not enter into a Contract with a Contractor unless the Contractor has received authorization from the Purchasing & Contracting Services Division of the Department of Finance and Administrative Services (“PCSD”) to provide a Cash Equivalent Payment in lieu of equal benefits, pursuant to Section 11. The Contractor is responsible for submitting the *Reasonable Measures Authorization* form to PCSD in a timely manner.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

2) *The following scenario is provided as an example of limiting the availability of a Cash Equivalent Payment: A Contractor limits the availability of spousal health insurance coverage to only those spouses who are not already covered by their own employer's health insurance plan. This Contractor is unable to provide health insurance to the domestic partners of its employees and instead offers a Cash Equivalent Payment. The Contractor may limit the availability of a Cash Equivalent Payment to only those employees whose domestic partners are not already covered by their own employer's health insurance plan.*

12 NON-DISCRIMINATORY DISCREPANCIES IN BENEFITS

A Contractor will not be deemed to be discriminating in the provision of benefits where the implementation of policies ending discrimination in benefits is delayed following the first award of a City Contract to a Contractor⁵:

- 12.1 until the first effective date after the first open enrollment process following the date the Contract with the City begins, provided that the Contractor submits to FAS evidence that reasonable efforts are being undertaken to end discrimination in benefits. This delay may not exceed twelve (12) months from the date the Contract with the City is entered into, and only applies to benefits for which an open enrollment process is applicable.

Comment: For purposes of Section 12.1, the term "effective date" refers to the date upon which the next benefits plan year begins; the term "open enrollment period" refers to the time when employees are eligible to enroll themselves or others in the Contractor's benefits plan; the term "open enrollment process" begins when the Contractor starts planning for, and negotiating with its insurance provider(s) regarding, the benefits to be offered during the next benefits plan year, and ends at the next effective date.

- 12.2 until administrative steps can be taken to incorporate Non-discrimination in Benefits into the Contractor's infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the Director upon the written request of the Contractor.

⁵ See Form CSD EB-2: *Substantial Compliance Authorization*. The City shall not enter into a Contract with a Contractor unless the Contractor has received authorization from the Purchasing & Contracting Services Division of the Department of Finance and Administrative Services ("PCSD") to delay implementation of equal benefits pursuant to Section 12. The Contractor is responsible for submitting the *Substantial Compliance Authorization* form to PCSD in a timely manner.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

- 12.3 until the expiration of a Contractor's current collective bargaining agreement(s) where all of the following conditions have been met:
- 12.3.1 the provision of benefits is governed by one or more collective bargaining agreement(s); and
 - 12.3.2 the Contractor takes all reasonable measures to end discrimination in benefits by requesting that the Union(s) involved agree to either reopen the agreement(s) in order for the Contractor to take whatever steps necessary to end discrimination in benefits or end discrimination in benefits without reopening the collective bargaining agreement(s); and
 - 12.3.3 in the event that the Contractor cannot end discrimination in benefits despite taking all reasonable measures to do so, and, subject to the Union's approval, the Contractor provides a Cash Equivalent Payment to eligible employees for whom benefits are not available. The Contractor shall take all reasonable measures to ensure that the Cash Equivalent Payment begins no longer than three (3) months from the date the Contract with the City is executed.

13 WAIVERS

- 13.1 A Contract Awarding Authority, after encouraging a non-compliant prospective Contractor to comply with SMC Ch. 20.45, may submit to the Director a request to waive the requirements of this Chapter where:
- 13.1.1 Award of a Contract is necessary to respond to an emergency. Whenever these provisions would adversely affect the City's interests because of an emergency as determined by the head of the Contract Awarding Authority, the Contract Awarding Authority may request a Waiver under this provision;
 - 13.1.2 The Contractor is a sole source. Whenever it can be established to the satisfaction of the head of the Contract Awarding Authority that only one (1) Contractor is available with the expertise required to provide the goods or services desired, the Contract Awarding Authority may request a Waiver under this provision;
 - 13.1.3 The Contractor is a public entity that does not provide equal benefits;

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

- 13.1.4 The requirements are inconsistent with a grant or agreement with a public agency;
- 13.1.5 The City is purchasing goods and/or services through a cooperative or joint purchasing agreement;
- 13.1.6 No capable, compliant Contractors are available. Whenever it can be established to the satisfaction of the Contract Awarding Authority that no compliant Contractors are capable of providing goods or services that respond to the City’s requirements, the Contract Awarding Authority may request a Waiver under this provision.

Comment: The following is an example of when a Waiver under Section 13.1.6 might be necessary: In response to a call for Bids, a Contract Awarding Authority receives two Bids for a particular Contract. Both bidders satisfy all of the City’s requirements except for the Non-discrimination in Benefits requirement. The circumstances are such that it is not feasible for the Contract Awarding Authority to delay the Contract in order to allow for another round of competitive bidding. A Waiver of the equal benefits requirement may be granted by the Director under these conditions, provided that the Contract Awarding Authority may not seek a Waiver under this provision until it has taken all reasonable measures to facilitate compliance from an otherwise responsive bidder.

- 13.2 Requests for Waivers. Requests for Waivers of these provisions are to be made to the Director by the Contract Awarding Authority via a written justification addressed to the Purchasing & Contracting Services Division of the Department of Finance and Administrative Services prior to the award of the Contract, unless otherwise specified herein. The Department may provide a form for Waiver requests.⁶

- 13.2.1 Criteria. The written justification requesting a Waiver must provide information on the following factors:
1. The dollar amount of the Contract and a statement of the scope of work and the goods, tasks, or services to be provided or performed by the Contractor or through the Contract.
 2. An explanation of the situation requiring a Waiver of these requirements.
 3. An explanation of the alternatives to a Waiver that were considered by the Contract Awarding Authority, and why each alternative was rejected.

⁶ See Form CSD EB-4: *Equal Benefits Waiver Request*

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

4. A statement indicating whether the Contract Awarding Authority anticipates any amendment to the Contract, including the potential scope of work and estimated dollar value of additional work.
5. A description of the steps taken to identify other qualified Contractors or methods of purchasing and an explanation of the rationale for selecting the Contractor or proposed method of purchasing.

13.3 Additional Requirements. Where a Contract Awarding Authority seeks to obtain the approval of a Waiver from the Director, the Contract Awarding Authority must:

- 13.3.1 inform the prospective Contractor that the Non-discrimination in Benefits requirement of SMC Ch. 20.45 applies to the Contract in question; and
- 13.3.2 attempt to award any future Contracts for the needed goods, public works, or services to a Contractor that does not discriminate in the provision of benefits by developing contacts with other providers who do comply with the Non-discrimination in Benefits requirement of SMC Ch. 20.45 and/or by referring the sole source provider to the City’s Purchasing & Contracting Services Division (“PCSD”) so that CSD may assist the sole source provider to fully comply with the Non-discrimination in Benefits requirement of SMC Ch. 20.45.

Decisions by the Director to issue or deny Waivers are final.

14 SANCTIONS AND REMEDIES

14.1 The Director shall determine and impose appropriate sanctions, and/or remedies for a Contractor’s breach of a Contract subject to the requirements of SMC Ch. 20.45 and these rules including, but not limited to:

- 14.1.1 Disqualification of the Contractor from bidding on or being awarded a City contract for a period of up to 5 years;
- 14.1.2 Contractual remedies, including, but not limited to, liquidated damages or termination of the Contract;
- 14.1.3 Allowance for remedial action after a finding of non-compliance. Where the Director determines that the best resolution of non-compliance would be remedial action by the Contractor, the Director may allow the Contractor to

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

take such action in lieu of Contract termination or disqualification. The Director may require the Contractor to provide Cash Equivalent Payments to employees who did not receive equal benefits during the term of the Contract. The Director may require other appropriate remedial action, including expedited implementation of equal benefits, provided that any remedial action authorized under this Chapter must be undertaken within sixty (60) days of the date of the finding of non-compliance. Circumstances that would favor remedial action include:

1. where the Contractor’s non-compliance was nominal or unintentional; or
2. where the Contractor believed in good faith that its benefits policies were in compliance with the requirements of SMC Ch. 20.45 and these rules and procedures; or
3. where the Director determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of equal benefits to eligible employees, in accordance with the intent of SMC Ch. 20.45.

14. 2 The Director may reject an entity’s bid or proposal if the Director determines that the entity was set up, or is being used, for the purpose of evading the requirements or the intent of SMC Ch. 20.45 or these rules.

14.2.1 The Director may examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of evading the requirements or the intent of SMC Ch. 20.45. The factors to be considered in this determination may include but are not limited to:

1. the legal structure of the entity;
2. the degree of control the entity exercises over the provision of benefits;
3. the date the entity was formed; and
4. the role within the entity of the person signing the Contract.

15 INTERNAL DOMESTIC PARTNERSHIP REGISTRY

For purposes of administering non-discriminatory benefits, a Contractor may choose to recognize as valid domestic partnerships registered with the City of Seattle in accordance with Seattle Ordinance No. 117244⁷, as well as domestic partnerships registered pursuant to any state or local law authorizing such

⁷ See attached: *Seattle Registry of Domestic Partnership*.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

registration. In addition, a Contractor may institute an internal domestic partnership registry to allow for the provision of equal benefits to employees with domestic partners. For employees who are located in a jurisdiction where no governmental domestic partnership registry is available⁸, Contractors must utilize an internal registry of domestic partnerships in order to administer equal benefits.⁹

16 VERIFICATION OF DOMESTIC PARTNERSHIP OR MARRIAGE

A Contractor may verify the existence of a domestic partnership or marriage to the extent such verification is undertaken equally for employees with domestic partners and employees with spouses.

Comment: For example, if a Contractor requires a married employee to provide a copy of his or her marriage license, the Contractor may also require an employee to provide a Certificate of Domestic Partnership. For many employers, an employee’s sworn statement on an employer-provided Affidavit of Domestic Partnership functions as sufficient verification of a Domestic Partnership.

17 EXCESS COSTS

In the event that the actual cost of providing a particular benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Contractor may condition its provision of equal benefits upon the employee agreeing to pay the excess costs. The excess costs the Contractor may pass on to the employee may include only the actual costs of the benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

Comment: For example, if a Contractor is able to demonstrate that it is required to pay a higher premium for dental coverage for an employee’s domestic partner than for an employee’s spouse, the Contractor may require the employee to pay this excess cost. (Note: This does not include a situation where an increase in the pool of eligible enrollees may have the effect of raising premiums across the board.) By contrast, if, in implementing a new dental plan in order to offer coverage to domestic partners, the Contractor incurred broker’s fees, the

⁸ Please note that the City of Seattle’s Domestic Partner Registry has no residency requirement and any citizen, regardless of where they are located, may register their domestic partnership with the City.

⁹ See attached: *Affidavit of Marriage/Domestic Partnership*. This is provided as an example of an employer-provided registry that is commonly used to administer equal benefits.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

employee with a domestic partner cannot be required to pay any portion of this excess cost.

18 TAXATION

18.1 The withholding of income tax from an employee for income associated with the provision of benefits is permissible to the extent the taxation is required by state or federal law. A Contractor is not required to compensate employees for any employee tax obligations associated with receipt of domestic partner benefits and the application federal or state tax law.

18.2 Nothing in these rules is intended to require a Contractor to take any action that would jeopardize the tax-qualified status of a retirement plan.

Comment: The following information is intended for reference purposes only and should not be relied upon as legal advice. Contractors should consult an attorney if they are in need of legal advice regarding taxation issues. When employers provide health care benefits for the spouse and/or dependents of their employees, the Internal Revenue Code generally allows the money paid by the employer for these benefits to be excluded from the employee's gross income. (See, Internal Revenue Code §§ 105, 106.) No such exclusion exists for benefits given to an employee for his or her domestic partner, or the dependents of a domestic partner. Therefore, the fair market value of the benefits provided to the employee's domestic partner and/or the dependents of a domestic partner must be imputed as income for that employee and taxed accordingly.

19 NOTIFICATION

Notification by a Contractor to its employees regarding the provision of benefits to employees with spouses and employees with domestic partners must be conducted so that all employees are given equal notice of all available benefits.

20 CONTINUATION COVERAGE

The continuation of benefits, including health benefits, must be provided equally to the spouses of employees and the domestic partners of employees, except where otherwise prohibited by law.

21 APPLICATION TO SMALL WORKS AND OTHER ROSTER PROGRAMS

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

The requirements of SMC Ch. 20.45 and these rules apply to Contractors that enter into Contracts pursuant to a small works or consultant roster program as authorized by RCW 39.04.155, 35.22.620 and SMC 3.114.160, respectively. SMC Ch. 20.45 and these rules apply to small works rosters whether such roster is maintained by the City or the City enters into an interlocal agreement with another public entity to utilize its roster.

22 INVESTIGATIVE AUTHORITY

Upon the Contractor’s entry into a Contract with the City or upon the City’s receipt of a Contractor’s Bid Form or any other document in which the Contractor asserts its compliance with the Non-discrimination in Benefits requirement, the Director shall have the authority to inspect all supporting evidence reasonably necessary to validate the Contractor’s compliance with SMC Ch. 20.45 and these rules. Supporting evidence may include but is not limited to: documentation, reports, and information (including interviews) from Contractors, Contractor employees, bidders, members of the Contract Awarding Authority, and others as necessary. Such investigation may be made subsequent to a report of non-compliance or pursuant to a random audit of a Contractor’s employee benefits policies.

A Contractor’s failure to provide information requested pursuant to the Director’s investigative authority shall be a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by Contract and these rules.

23 REGISTERING A COMPLAINT OF NON-COMPLIANCE

Any person who wishes to register a complaint alleging that a Contractor required to comply with SMC Ch. 20.45 and these rules is not in compliance may do so by contacting the City’s Purchasing & Contracting Services Division (PCSD). Complaints may be submitted by phone or by mail: **City of Seattle - Equal Benefits Program, Purchasing & Contracting Services Division, 700 Fifth Avenue, Suite 4112, Seattle, WA, 98124, (206) 684-0430**. PCSD may provide a form for the purpose of registering a complaint of non-compliance.¹⁰ To the extent permitted by state law, PCSD will maintain the confidentiality of all complainants who register a complaint pursuant to this provision (See, RCW Ch. 42.17, Washington State Public Disclosure Act). Complainants will have the opportunity to request confidentiality when registering their complaint.

24 LEGISLATIVE AUTHORITY

¹⁰ See Form CSD EB-5: *Allegation of Non-Compliance with Seattle’s Equal Benefits Requirement (SMC Ch. 20.45)*

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

Nothing in these provisions shall limit the right of the City Council to waive the requirements of SMC Ch. 20.45 or these rules and procedures.

25 APPENDICES

25.1 Sample Forms - Attached

25.1.1 Registration of Domestic Partnership – City of Seattle

25.1.2 Affidavit of Marriage/Domestic Partnership – City of Seattle



City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

Appendix 25.1.1

REGISTRATION OF DOMESTIC PARTNERSHIP
City of Seattle, Washington

[PLEASE NOTE: This copy is provided for reference purposes only. To obtain an official application for Registration of Domestic Partnership, contact the Seattle City Clerk’s Office at (206) 684-8344]

APPLICANT ONE:

NAME (First, Middle Initial, Last)

ADDRESS (Street) (City) (State) (Zip Code)

APPLICANT TWO:

NAME (First, Middle Initial, Last)

- We are in a relationship of mutual support, caring and commitment.*
- We are not related by blood closer than would bar marriage in the State of Washington.*
- We are each other’s sole domestic partner.*
- We are both at least 18 years of age.*

WE, THE UNDERSIGNED, CONSIDER OURSELVES TO BE DOMESTIC PARTNERS AS DESCRIBED ABOVE, AND WISH TO REGISTER OUR DOMESTIC PARTNERSHIP WITH THE CITY OF SEATTLE, OFFICE OF THE CITY CLERK, PURSUANT TO CITY COUNCIL ORDINANCE NO. 117244, AND REQUEST THAT THE CITY CLERK ISSUE TO US A CERTIFICATE OF REGISTRATION OF DOMESTIC PARTNERSHIP.

- We understand that the Registration of a Domestic Partnership is not a marriage certificate.
- We understand that the Registration of Domestic Partnership does not afford our relationship any new or different legal status.
- We understand that neither this application nor the Registration is intended to create any new or different legal rights or responsibilities.
- We understand that neither this Application nor the Registration is intended to either establish or evidence any contractual relationship or contractual obligation between us.
- We understand that this Application for Registration of Domestic Partnership and a Registration of Domestic Partnership issued by the Office of the City Clerk are public records (pursuant to RCW 42.17).

APPLICANT ONE:

APPLICANT TWO:

SIGNATURE

SIGNATURE

SUBSCRIBED AND SWORN TO BEFORE ME
this ____ day of _____, 20____

SUBSCRIBED AND SWORN TO BEFORE ME
this ____ day of _____, 20____

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

Notary Public
My Commission Expires: _____

Notary Public
My Commission Expires: _____

Appendix 25.1.2

**SAMPLE AFFIDAVIT OF
MARRIAGE/DOMESTIC PARTNERSHIP**

SECTION I

I, _____ certify that (*Complete either “A” or “B”*):
Name of Employee (Print)

A. I, and _____ were legally married on _____.
Name of Spouse (Print) Date of Marriage (Print)

-OR-

B. I, and _____ are domestic partners, and we:
Name of Domestic Partner (Print)

1. Share the same regular and permanent residence; and
2. Have a close, personal relationship; and
3. Are jointly responsible for “basic living expenses”, as defined below; and
4. Are not married to anyone; and
5. Are each eighteen (18) years of age or older; and
6. Are not related by blood closer than would bar marriage in the State of _____ ; and
7. Were mentally competent to consent to contract when our domestic partnership began; and
8. Are each other’s sole domestic partner and are responsible for each other’s common welfare.

“Basic living expenses” means the cost of basic food, shelter, and any other expenses of a Domestic Partner which are paid at least in part by a program or benefit for which the partner qualified because of the Domestic Partnership. The individuals need not contribute equally or jointly to the cost of these expenses as long as they agree that both are responsible for the cost.

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”

SECTION II

- A. I understand that this affidavit shall be terminated upon the death of my spouse/domestic partner or by a change of my circumstance attested to in this affidavit.

I agree to notify my payroll/personnel representative if there is any change of circumstances attested to in this affidavit with thirty (30) days of change by filing a Statement of Termination of Marriage/Domestic Partnership.

- B. After such termination, I understand that another Affidavit of Marriage/Domestic Partnership cannot be filed until ninety (90) days after a Statement of Termination of Marriage/Domestic Partnership has been filed with my payroll/personnel representative, unless such termination is due to the death of my spouse/domestic partner or dissolution of my marriage.

SECTION III

We understand that this information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.

We understand that this declaration of responsibility for our common welfare may have legal implications under state law.

We understand that a civil action may be brought against us for any losses, including reasonable attorney’s fees, because of a false statement contained in this affidavit of Marriage/Domestic Partnership.

We also certify under penalty of perjury, under laws of the State of _____, that the foregoing is true and correct.

I, the undersigned employee, understand that willful falsification of information on this affidavit may lead to disciplinary action, up to and including discharge from employment.

Signature of Employee

Signature of Spouse/Domestic Partner

Address

Address

City Contracts – Non-Discrimination in Benefits
“Equal Benefits Program Rules”