



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 4/12/2011

Report Type: Staff/Discussion

Title: Interim City Manager Contract Approval and Succession Resolution

Report ID: 2011-00397

Location: Citywide

Recommendation: Adopt 1) a Resolution authorizing the Mayor to execute a contract for services as Interim City Manager with Edgar & Associates LLC for an initial term of three months for \$46,800, and \$15,600 per month thereafter; and 2) a Resolution establishing an order of succession designating who serves as acting City Manager in the Interim City Manager's absence and repealing Resolution 2010-165.

Contact: Geri Hamby, Director of Human Resources, (916) 808-7173, Department of Human Resources

Presenter: Geri Hamby, Director of Human Resources, (916) 808-7173

Department: Human Resources

Division: HR Administration

Dept ID: 08001011

Attachments:

- 1-Description/Analysis
- 2-Interim City Manager
- 3-Succession Resolution
- 4-City Agreement

City Attorney Review

Approved as to Form
Sandra Talbott
4/11/2011 3:43:45 PM

Approvals/Acknowledgements

Department Director or Designee: Geri Hamby - 4/11/2011 2:28:05 PM

Assistant City Manager: Patti Bisharat - 4/11/2011 3:24:51 PM



Description/Analysis

Issue: On April 7, 2011, the City Council appointed William H. Edgar Interim City Manager effective April 9, 2011. Mr. Edgar has a long history with the City of Sacramento having served as Assistant City Manager, Executive Director of the Sacramento Housing and Redevelopment Agency, and as City Manager, the latter position from which he retired in 1999. However, because his contract will be for 60% time (3 days/week), he will appoint former City of Sacramento Assistant City Manager Betty Masuoka to augment the existing management team and to serve as his back up. Her appointment will be for 2-3 days a week for this interim period.

The contract with Edgar & Associates LLC for Mr. Edgar's time reflects his compensation for three months and monthly compensation thereafter if extensions are mutually agreed upon. Ms. Masuoka will be paid through the city payroll as a temporary, non-benefit qualified employee. Both the contract with Mr. Edgar and the appointment of Ms. Masuoka will end when the new City Manager is appointed.

The succession resolution names Betty Masuoka, Interim Deputy City Manager, then the current Assistant City Managers to back fill when Mr. Edgar is not available.

Policy Considerations: With the resignation of Interim City Manager Gustavo Vina, the City has a need to appoint a new Interim City Manager until the recruitment for a new permanent City Manager can be completed.

Environmental Considerations: Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Mr. Edgar's experience with, and understanding of the City will facilitate a smooth transition during this interim period until a permanent City Manager is appointed.

Financial Considerations: The contract with Edgar & Associates LLC will be \$46,800 for an initial three month period, and \$15,600 per month thereafter. The cost of the contract with Edgar & Associates LLC and Ms. Masuoka's salary will be covered by the City Manager's Office operating budget.

Emerging Small Business Development (ESBD): Not applicable.



RESOLUTION NO.

Adopted by the Sacramento City Council

AGREEMENT FOR SERVICES OF INTERIM CITY MANAGER

BACKGROUND

- A. On April 7, 2011, the City Council of the City of Sacramento appointed William H. Edgar, as Interim City Manager effective April 9, 2011.
- B. The contract with Edgar & Associates LLC for Mr. Edgar's time reflects his compensation for three months and monthly compensation thereafter if extensions are mutually agreed upon.
- C. The contract with Edgar & Associates LLC will be \$46,800 for an initial three month period, and \$15,600 per month thereafter.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Mayor is authorized to execute an agreement with Edgar & Associates LLC for \$46,800 for an initial three month period, and \$15,600 per month thereafter.



RESOLUTION NO.

Adopted by the Sacramento City Council

REPEALING RESOLUTION 2010-165 AND ESTABLISHING ORDER OF SUCCESSION IN THE EVENT OF ABSENCE OR DISABILITY OF THE INTERIM CITY MANAGER

BACKGROUND

- A. The City of Sacramento requires a resolution of succession on file, in order to identify who will assume the Interim City Manager's duties and obligations during the Interim City Manager's absence.
- B. This resolution is needed in the event of the Interim City Manager's absence for the City's emergency plan.
- C. During the unplanned absence or disability of the Interim City Manager, the persons holding the office designated below in Section 2 in the order listed, shall assume the duties and obligations of the Interim City Manager until such time as the Interim City Manager shall return to duty. The persons holding the offices named below shall only assume the Interim City Manager's duties if the person holding the office above them on the list is unavailable to assume such duties.
- D. During the planned absence of the Interim City Manager, the Interim City Manager may designate any of the individuals listed in Section 2 as Acting City Manager.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Resolution No. 2010-165 is repealed.
- Section 2. In the event of an unplanned absence or disability of the Interim City Manager, the list of offices and names is as follows (in order of succession):
 - 1. Interim Deputy City Manager Betty Masuoka
 - 2. Assistant City Manager Cassandra Jennings
 - 3. Assistant City Manager John Dangberg
 - 4. Assistant City Manager Patti Bisharat
- Section 3. In the event of a planned absence, the Interim City Manager designate any of the individuals listed in Section 2 as Acting City Manager.



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR CITY MANAGER SERVICES (“Agreement”) is made and entered into this 9th day of April, 2011, by and between the City of Sacramento, a California charter city and municipal corporation (“City”) and Edgar & Associates LLP (“Contractor”) (each a “party” and collectively “the parties”).

RECITALS:

A. City wishes to retain Contractor to provide the services of William H. Edgar as Interim City Manager; and

B. Contractor represents that it possesses the qualifications, experience, and facilities necessary to perform the services contemplated herein and has proposed to provide those services; and

C. City desires to retain Contractor to perform the proposed Interim City Manager services.

AGREEMENT:

City and Contractor agree as follows:

1. Scope of Services. Contractor shall provide the executive/administrative services as described in Exhibit ‘A’, during the term described in Section 2, and for the compensation described in Section 3.
2. Term of Agreement. Contractor shall begin performance of its services as of April 9, 2011 pursuant to the action of the City Council taken at a Special Meeting of the City Council on April 7, 2011, and shall continue for three months to July 8, 2011 unless mutually extended on a month to month basis until the assignment is completed as agreed or termination of this Agreement pursuant to the provisions of Section 18.

3. Compensation.

A. The compensation to be paid by City to Contractor for services as described in Exhibit ‘A’ shall be at the rate of \$150 per hour, but not to exceed \$46,800 for the initial three month period, and \$15,600 per month thereafter in accordance with the provisions of Section 2. Contractor shall be reimbursed for out-of-pocket expenses incurred for travel, postage and delivery, and long-distance telephone charges. In lieu of itemizing such chargeable expenses, Contractor will add an administrative charge of five (5) percent to the monthly billings.

B. City shall make no payment to Contractor in any greater amount for any extra, further, or additional services, unless such services and payment therefore have been mutually

agreed to and this Agreement has been formally amended in accordance with Section 22 of this Agreement.

C. Contractor agrees to testify at City's request if litigation is brought against City in connection with Contractor's work. Unless the action is brought by Contractor or is based upon Contractor's negligence or intentional tortious conduct, City will compensate Contractor for the testimony at Contractor's hourly rate as provided above.

5. Invoice, Payments, Notices. Contractor shall submit monthly invoices for services rendered during the preceding month and expenses incurred. City shall pay invoices that are undisputed within thirty (30) days of receipt and approval. The parties agree to exercise good faith and diligence in the resolution of any disputed invoice amounts.

All invoices, notices, or other documents concerning this Agreement shall be served as follows:

If to City:

City of Sacramento
Attn: Betty Masuoka
915 I Street – New City Hall
Sacramento, CA 95814

If to Contractor:

Lawrence D. Edgar
Managing Partner
Edgar & Associates LLP
7311 Greenhaven Drive, #110
Sacramento, CA 95831

6. Independent Contractor.

A. Contractor (including Contractor's employees) is an independent contractor and no relationship of employer-employee exists between the parties. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and as an independent contractor, Contractor indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

B. Contractor, in the performance of its obligation hereunder, is subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished but not as to the means and methods used by Contractor for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by Contractor, such person shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor.

D. As an independent contractor and not an employee of City, Contractor shall have no right to act on behalf of City as its agent or have the authority to bind City to any obligation unless specifically authorized by City.

7. Authority of Contractor. It is understood that Contractor is to provide Interim City Manager services to City. Contractor shall provide services to perform the duties of Interim City Manager pursuant to the City Charter, Code, and as otherwise authorized by the City Council. The Contractor shall ensure that the City Council be informed of major decisions taken in performing the duties of the Interim City Manager.

8. Subcontracting and Assignment. Contractor shall not subcontract or assign any portion of the work to be performed under this agreement without the prior written consent of City.

9. Ownership of Work Product. All reports, documents, or other work products of Contractor shall become the property of City and shall be delivered to City upon completion of services. Contractor may retain copies for its files and internal use, however, Contractor shall not disclose any of the work products of this Agreement to any third party, person, or entity, without prior written consent of City. Upon reasonable notice, City representatives shall have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of the Agreement. Contractor may not publish information obtained in connection with services rendered under this Agreement.

10. Indemnification. Contractor shall indemnify, defend, and hold harmless City, its officers, employees, and agents from and against any and all claims, loss, costs, expenses (including, but not limited to, attorney's fees and costs incurred by City), injury, or damage caused by the recklessness, negligent acts or omissions, or intentional misconduct of Contractor, its employees, officers, or agents, or any of its contractors or subcontractors used in performance of this Agreement.

11. Insurance. Without limiting Contractor's indemnification of City, Contractor shall provide and maintain at its own expense during the term of this Agreement the following insurance coverage and provisions:

A. Within ten (10) days of the approval of this Agreement, Contractor shall provide certificates of insurance certifying that all coverage as required herein has been obtained and remains in force for the period required by this Agreement. Any required endorsement shall be attached to the Certificate or certified as issued on the Certificate. All Certificates of Insurance shall be sent to the following address:

City of Sacramento
Attn: Betty Masuoka
915 I Street – New City Hall
Sacramento, CA 95814

All Certificates of Insurance shall provide that City shall receive thirty (30) days advance written notice of cancellation or major modification before the expiration date.

B. Should, consistent with the terms of this Agreement, any of the work under this Agreement be subcontracted, Contractor shall require each of its subcontractors to provide the insurance required herein, or Contractor may name the subcontractors as additional insured under its own policies.

C. Insurance Required:

(i) Comprehensive General Liability Insurance or Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than one million dollars (\$1,000,000) each occurrence and written on an occurrence basis. If the insurance has a General Aggregate it must be no less than two million dollars (\$2,000,000). Each type of insurance shall include coverage for premises/operations, products/completed operations, contractual liability, broad form property damage, and personal injury.

For either type of general liability insurance, coverage shall include the following endorsements:

a. Additional Insured Endorsement: Insurance afforded by this policy shall also apply to City, and members of the City Council of the City, the officers, agents and employees of City, individually and collectively, as additional insured.

b. Primary Insurance Endorsement: Insurance afforded by the Additional Insured Endorsement shall apply as primary insurance, and other insurance maintained by City, its officers, agents and employees shall be excess only and not contributing with insurance provided under this policy.

c. Notice of Cancellation or Change of Coverage Endorsement: Insurance provided by this policy shall not be cancelled or changed so as to no longer meet the specified City insurance requirements without thirty (30) days prior written notice of such cancellation or change being delivered to City at the address as specified above.

d. Severability of Interest Endorsement: Insurance provided by this policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit brought, except with respect to the policy's limits of liability.

(ii) Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned, and hired vehicles.

(iii) Workers' Compensation and Employer's Liability Insurance with statutory California Workers' Compensation coverage and Employer's Liability coverage of not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Agreement. Coverage shall include an endorsement whereby the insurer agrees to waive all rights of subrogation against City, City Council, and officers, officials, employees and volunteers of City for losses arising from work performed by the Contractor under this Agreement.

(iv) Professional Errors and Omissions Liability Insurance in an amount not less than one million dollars (\$1,000,000) and written on an occurrence basis. If coverage is written on a claims made basis, such policy shall provide that:

a. The policy retroactive date coincides with or precedes Contractor's start of work (including subsequent policies purchased as renewals or replacements).

b. If the policy is terminated for any reason during the term of this Agreement, Contractor shall either purchase a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy, or shall purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement and a replacement policy with a retroactive date coinciding with or preceding the expiration date of the terminating policy.

c. If this Agreement is terminated or not renewed, Contractor shall maintain the policy in effect on the date of termination or non-renewal for a period of not less than two years there from. If that policy is terminated for any reason during the two year period, Contractor shall purchase an extended reporting provision at least covering the balance of the two year period to report claims arising from work performed in connection with this Agreement or a replacement policy with a retroactive date coinciding with or preceding the retroactive date of the terminating policy.

12. Professional Services: The work shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Contractor and any subcontractors are engaged.

13. Responsibility of Contractor.

A. Contractor shall be solely responsible for the quality and accuracy of its work and the work of its Contractors performed in connection with this Agreement. Any review, approval, or concurrence therewith by City shall not be deemed to constitute acceptance or waiver by City of any error or omission as to such work.

B. Contractor shall coordinate the activities of all sub-Contractors and is responsible to ensure that all work products are consistent with one another to produce a unified, workable, and acceptable whole functional product.

C. City shall promptly notify Contractor of any defect in Contractor's performance.

14. Audit. The following audit requirements apply from the effective date of this Agreement until three years after City's final payment:

A. Contractor shall allow City's authorized representatives' reasonable access during normal business hours to inspect, audit, and copy Contractor's records as needed to evaluate and verify any invoices, payments, and claims that Contractor submits to City or that any payee of Contractor submits to Contractor in connection with this Agreement. 'Records' includes, but is not limited to, correspondence, accounting records, sub-Contractor files, change order files, and any other supporting evidence relevant to the invoices, payments, or claims.

B. City and Contractor shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City. Such examinations and audits shall be confined to matters connected with the performance of this Agreement including but not limited to administration costs.

C. The provisions of Section 13 shall survive the expiration or termination of this Agreement.

15. Publication of Documents and Data. Contractor shall not publish or disclose to any third party documents or data without the prior written consent of City. However, submission or distribution, to meet official regulatory requirements, or for other purposes authorized by this Agreement shall not be construed as publication in derogation of the rights of either City or Contractor.

16. Interest of Contractor. Contractor covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner with the performance of services required to be performed pursuant to this Agreement. Contractor further covenants that in the performance of this work, no person having any such interest shall be employed.

17. Employment Practices. Contractor, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability, or marital status in its employment practices.

18. Termination. Either party shall have the right to terminate this Agreement at any time by serving upon the other party thirty (30) days advance written notice of termination. The City's right to terminate this contract shall be made upon the vote of five (5) members of the City Council. The notice shall be deemed served and effective for all purposes on the date it is deposited in the United States mail, postage prepaid and addressed to City or Contractor at the address indicated in Section 5. In the event of termination:

A. Contractor shall immediately cease rendering services pursuant to this Agreement.

B. Contractor shall deliver to City copies of all writings prepared pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, drawings, blueprints, printing, Photostatting, photographing, electronic messages or other documents and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols or combinations thereof. All materials provided to City upon termination become the property of City.

C. Contractor shall be paid for any required services satisfactorily completed prior to the date of termination less compensation, if any, to City for damages suffered as a result of Contractor's failure to comply with the terms of this agreement.

19. Jurisdiction. This agreement shall be administered and interpreted under the laws of the State of California.

20. Conflict with Laws or Regulations/Severability. This agreement is subject to all applicable laws and regulations. If any provision of this agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the agreement to either party is lost, the agreement may be terminated at the option of the affected party. In all other cases, the remainder of the agreement shall continue in full force and effect.

21. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

22. Amendments. Any amendment to this Agreement must be in writing and executed by both parties.

23. Entire Agreement. This Agreement, all exhibits attached hereto, all other terms or provisions incorporated herein by reference, and any notice to proceed issued in accordance with the terms hereof constitute the entire Agreement and understanding between City and Contractor as to the subject matter hereof and supersedes all prior oral and written agreements.

24. Successors and Assigns. This agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

25. Construction. This agreement reflects the contributions of both parties and accordingly the provisions of California Civil Code section 1654 shall not apply in interpreting this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO, A CALIFORNIA
CHARTER CITY AND MUNICIPAL
CORPORATION

EDGAR & ASSOCIATES LLP

By: _____
KEVIN JOHNSON
Mayor

By: _____
LAWRENCE D. EDGAR, CPA
Managing Partner

DATED: _____

DATED: _____

APPROVED AS TO FORM:

By: _____
EILEEN MONAGHAN TEICHERT
Sacramento City Attorney

SCOPE OF SERVICES

Contractor will provide the services of William H. Edgar to serve as Interim City Manager and to perform the city manager duties provided for in City's Charter and Code and as delegated by the Sacramento City Council.