

RESOLUTION NO. 2011-362

Adopted by the Sacramento City Council

June 21, 2011

APPROVE FIRST AMENDMENT TO THE GREYHOUND LEASE FOR THE TERMINAL AT 420 RICHARDS BOULEVARD AND THE PROPERTY MANAGEMENT SERVICES AGREEMENT FOR THE GREYHOUND TERMINAL

BACKGROUND

- A. On May 20, 2008, City Council adopted Resolution No. 2008-318 authorizing the Greyhound Terminal capital improvement project at 420 Richards Boulevard ("Terminal"). Upon project completion, the new Terminal will replace the existing L Street terminal and provide improved bus and taxi circulation, and passenger loading.
- B. On February 24, 2009, City Council adopted Resolution No. 2009-116 approving the lease with Greyhound for the Terminal, City Agreement 2009-0225, which was executed on March 9, 2009.
- C. On February 24, 2009, City Council adopted Resolution No. 2009-116 approving the 420 Richards Boulevard Greyhound Project Memorandum of Understanding with the Downtown Sacramento Revitalization Corporation ("DSRC"), which was executed on March 2, 2009.
- D. The DSRC, a 501c3 nonprofit corporation, was established to alleviate the burdens of the City and Redevelopment Agency by assisting with the revitalization of the River District, the Railyards and the Merged Downtown redevelopment areas and will oversee the property management of the Terminal including collect rent, oversee construction warranties, coordinate City/Greyhound security and cooperation, and enforce lease obligations.
- E. The construction is ahead of schedule and the Terminal will be completed as early as July 11, 2011.
- F. Greyhound desires to relocate early to the new Terminal provided it does not need to pay rent in two locations as Greyhound is obligated under its existing lease for the L Street terminal to pay rent until the lease expires on March 31, 2012.
- G. It is in the best interests of the City to amend the lease for the Terminal to allow for an early occupancy period, which will end no later than April 1, 2012, during which Greyhound will pay a reduced, nominal rent of \$100 per month because it will enable Greyhound to move early to the new Terminal and assume responsibility for Terminal maintenance, landscaping and security.

- H. Because of the rent payment is reduced during the early occupancy period, adequate funds will not be available to pay for the DSRC property manager; however, funds are available in project contingency of the Greyhound Capital Improvement Project Budget (B18420007).
- I. The new Terminal provides additional benefits because it is built to Greyhound's new security standards and provides a higher level of security for Greyhound customers; it will enable Greyhound to commence environmental mitigation efforts at the Downtown terminal early; and it will address development constraints caused by the Greyhound Terminal on nearby proposed redevelopment projects, including the 700/800 Block K Street Project.
- J. On February 24, 2009, City Council adopted Resolution 2009-115, which approved the Mitigated Negative Declaration and Monitoring Plan for the Greyhound project. The project was revised to include the extension of Sequoia Pacific Boulevard southerly to Bannon Street and make minor changes in internal traffic circulation on the project site. A Subsequent Mitigated Negative-Declaration ("MND") was prepared and circulated that examined the impacts of the extension of Sequoia Pacific Boulevard to Bannon Street. The Planning Commission reviewed and approved the Subsequent Mitigated Negative Declaration and adopted the Mitigation Monitoring Plan on May 27, 2010.

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

- Section 1. After due consideration of the facts presented, the findings, including the foregoing recitals and the environmental findings regarding this action, as stated in this Resolution are approved and adopted.
- Section 2. The City Council reviewed and considered the information contained in the previously adopted Subsequent MND for the Project, and all oral and documentary evidence received on the amendment to the lease. The City Council has determined that the previously adopted Subsequent MND constitutes an adequate, accurate, objective, and complete review of the proposed project and finds that no additional environmental review is required. The Subsequent MND reflects the City Council's independent judgment and analysis and the City Council adopts the Subsequent MND, and readopts the findings of fact in support of the MND and the mitigation monitoring plan.
- Section 3. The City Council finds that amending City Agreement 2009-0225 to provide a reduced rent to Greyhound that will allow for early occupancy of the Terminal is in the best interests of the City.
- Section 4. The City Manager or his designee is authorized to execute the first amendment to the lease with Greyhound Lines, Inc. for the terminal at 420 Richards Boulevard (City Agreement 2009-0225).

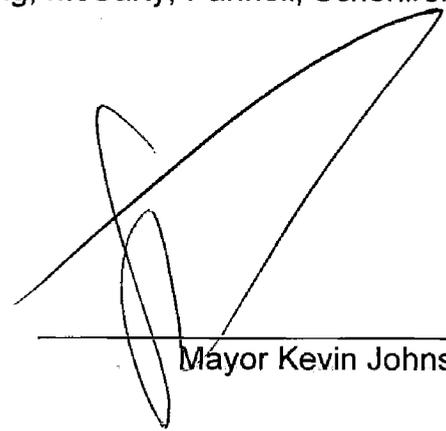
- Section 5. The City Manager or his designee is authorized to execute a property management services agreement with the DSRC for the Greyhound Terminal.
- Section 6. The agreements identified in Sections 4 and 5 are attached as Exhibits A and B, respectively, and are part of this resolution.
- Section 7. The property management fees will be paid until March 31, 2012 from the Greyhound Capital Improvement Project Budget (B1842007, Fund 1001) in an amount not to exceed \$20,000.

Attachments:

- Exhibit A – First Amendment to the 420 Richards Boulevard Greyhound Terminal Lease
Exhibit B – Property Management Services Agreement for Greyhound Terminal

Adopted by the City of Sacramento City Council on June 21, 2011 by the following vote:

- Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.
- Noes: None.
- Abstain: None.
- Absent: Fong



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

EXHIBIT A

FIRST AMENDMENT TO 420 RICHARDS BOULEVARD GREYHOUND TERMINAL LEASE CITY AGREEMENT NO. 2009-0225

This first amendment to the Greyhound Terminal lease (City Agreement 2009-0225) is dated _____, 2011, and is between the CITY OF SACRAMENTO, a California municipal corporation ("**City**" or "**Landlord**"), and GREYHOUND LINES, INC., a Delaware corporation ("**Tenant**").

Background

1. On February 24, 2009, Landlord and Tenant entered into a lease (the "**Lease**") for a bus terminal to be constructed at 420 Richards Boulevard. Although the Lease was effective when it was signed by both parties, Tenant's obligation to pay rent does not begin until Tenant commences occupation of the new terminal.
2. The City has long desired to relocate Tenant from the Downtown area as Tenant's existing bus terminal, located at 703 L Street in Downtown, creates an attractive nuisance for crime and loitering in the immediate area, is incompatible with nearby land uses, including nearby proposed redevelopment projects, and contributes to the overall blighting conditions existing in Downtown.
3. In the Lease, the City committed to completing construction of the new terminal by March 31, 2012, when Tenant's current lease with its existing landlord ("**DBP**") expires.
4. The new terminal has been constructed employing the latest Crime Prevention Through Environmental Design techniques and has numerous security features and, under the Lease, the Tenant will assume full maintenance responsibility for the facility and grounds from Landlord.
5. Tenant's current landlord has agreed to allow Tenant to move early as long as Tenant continues to pay its lease payments as agreed.
6. The City anticipates that the new terminal will be completed and ready for occupancy by Summer 2011 and Tenant is willing to move in early as long as it does not have to pay more than nominal rent to Landlord until it has completed its obligation to DBP.

7. It is in the City's best interests to have Tenant relocate from the Downtown terminal to the new terminal at a nominal rent payment to maintain the facility and grounds and have a business presence at the location.

With these background facts in mind, the Parties agree to amend the Lease (City Agreement 2009-0225) as follows:

1. Section 1.15 is amended to replace the reference to "Section 2.02(d)" with a reference to "Section 2.02(e)".
2. Sections 1.21 and 1.25 are amended to replace the references to "Section 2.02(b)" with references to "Section 2.02(c)".
3. Section 2.02 is amended to read as follows:

"2.02 TERM OF LEASE. The Term of this Lease includes all of the following periods:

(a) **Initial Term.** The "Initial Term" of this Lease consists of the "construction phase" and begins on the Effective Date and ends after the date when Landlord, acting as a Governmental Entity, has issued a certificate of occupancy for the Terminal Building and Tenant commences possession and occupancy of the Premises. During the Initial Term, Tenant shall not occupy the Premises other than to undertake Tenant's Improvements to the Premises and installation of Tenant's FF&E to make it suitable for commencement of Tenant's operations. During the Initial Term, no Rent shall be due and Tenant's only obligation under this Lease is to cooperate with Landlord in the planning and design of the Improvements and undertaking the necessary Tenant's Improvements and installation of Tenant's FF&E as needed to allow for its occupancy by the time specified in subsection 2.02(d), below.

(b) **Early Occupancy Term.** The "Early Occupancy Term" of this Lease begins at the end of the Initial Term on the date that Tenant commences possession and occupancy of the Premises for Tenant's operations and ends no later than the earlier date that either: (i) Tenant's current L Street Lease expires, or (ii) the date that Tenant and DBP mutually agree to terminate the L Street Lease. The Parties have the same rights and obligations during the Early Occupancy Term as they do during the "Occupancy Term" (as described in subsection 2.02(c), below), except that (i) the amount of Base Rent during the Early Occupancy Term shall be One Hundred Dollars (\$100) per month, (ii) the Parties shall not consider the time, if any, that Tenant possesses and occupies the Premises during the Early Occupancy Term when computing the twenty (20) year period described in subsection 2.02(c), and (iii) the Parties are not required to execute or record the memorandum required by subsection 2.02(e), below, during the Early Occupancy Term.

(c) **Occupancy Term**. The "Occupancy Term" of this Lease begins on the date the Early Occupancy Term ends, but if there is no Early Occupancy Term, then on the date that Tenant commences occupation of the Premises for Tenant's operations specified in subsection 2.02(d), below. The Occupancy Term shall extend for a period of twenty (20) years and end on the Termination Date. If the commencement date of the Occupancy Term occurs on a day other than the first day of the calendar month, the twenty (20) year period shall be measured from the first day of the calendar month next following the date Tenant commences occupation of the Premises.

(d) **Tenant's Possession**. If the Improvements have been completed and the Premises are ready for occupancy, then Tenant must commence occupation of the Premises for operation of Tenant's business no later than the earlier date that either: (i) Tenant's current L Street Lease expires, (ii) the date that Tenant and DBP mutually agree to terminate the L Street Lease. Landlord shall provide written consent for an extension of time for Tenant to commence occupancy of the Premises based on good cause. Failure of Tenant to occupy the Premises under the terms of this Lease shall be an Event of Default under Section 10.01.

(e) **Memorandum of Lease**. Within thirty (30) days after the Occupancy Term commences, Landlord shall prepare, the Parties shall execute, and Landlord shall record the Memorandum of Lease to establish the specified dates of the Occupancy Term and the amount of Rent, among other matters.

4. Except as specifically revised by this amendment, all the terms of the Lease remain in effect.

5. This amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

[The remainder of this page is left intentionally blank. The parties signatures appear on the following page.]

LANDLORD:
CITY OF SACRAMENTO,
a Municipal Corporation

By: _____

Dated: _____

Attest:

CITY CLERK

Approved as to form:

Michael T. Sparks,
Senior Deputy City Attorney

TENANT:
GREYHOUND LINES, INC.,
a Delaware Corporation

By: _____

Print Name: _____
Title: _____

Dated: _____

By: _____

Print Name: _____
Title: _____

Dated: _____



DSRC

Downtown Sacramento Revitalization DSRC

PROPERTY MANAGEMENT SERVICES AGREEMENT FOR GREYHOUND TERMINAL

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2010, by and between the DOWNTOWN SACRAMENTO REVITALIZATION CORPORATION, a non-profit public benefit corporation ("DSRC") and the CITY OF SACRAMENTO, a municipal corporation ("CITY"), which are also referred to herein collectively as "Parties" or singularly as "Party," who agree as follows:

- 1. Services.** Subject to the terms and conditions set forth in this Agreement, DSRC shall provide to CITY the services described in Exhibit A in regards to management of the Greyhound Terminal located at 420 Richards Blvd under the terms of the lease agreement between CITY and Greyhound Lines, Inc. ("Greyhound") dated February 24, 2009; City Agreement No. 2009-0225, (the "Greyhound Lease"), which is incorporated herein by this reference as if set forth in full. DSRC shall provide said services at the time, place, and in the manner specified in Exhibit A. This Agreement supersedes the Memorandum of Understanding for the 420 Richards Boulevard Greyhound Project dated March 2, 2009; City Agreement No. 2009-0206, (the "MOU"). DSRC shall not be compensated for services outside the scope of Exhibit A ("Additional Services") unless prior to the commencement of such services: (a) DSRC notifies CITY in writing and CITY agrees that such services are outside the scope of Exhibit A; (b) DSRC estimates the additional compensation required for the Additional Services; (c) CITY, after receipt of such notice, approves in writing the Additional Services and amount of additional compensation; and (d) this Agreement is amended to include the Additional Services and compensation.
- 2. Payment.** CITY shall direct Greyhound to pay to DSRC the lease payments owed to CITY under the Greyhound Lease. From the lease payments received by DSRC from Greyhound, DSRC shall pay itself for services rendered pursuant to this Agreement, deposit funds into capital reserve and redevelopment project accounts, and pay CITY the amount specified at the times and in the manner set forth in Exhibit B. The payment for property management services specified in Exhibit B shall be the only payments to be made to DSRC for the services rendered pursuant to this Agreement unless pursuant to Paragraph 1, above, CITY approves additional compensation for Additional Services. DSRC shall submit verification of all billings for said services to CITY in the manner specified in Exhibit B.
- 3. Facilities and Equipment.** Except as set forth in Exhibit C, DSRC shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for furnishing services pursuant to this Agreement. CITY shall furnish to

DSRC only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. In the event of any conflict between said general provisions and any other terms or conditions of this Agreement, such other terms or conditions shall control over the general provisions.
5. **Authority.** Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such Party, all approvals and consents which must be obtained to bind such Party have been obtained, and no further approvals, acts or consents are required to bind such Party to this Agreement.
6. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**DOWNTOWN SACRAMENTO
REVITALIZATION CORPORATION**

CITY OF SACRAMENTO

Ray Tretheway
President

By: John Dangberg,
Assistant City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DSRC General Counsel

Senior Deputy City Attorney

ATTEST:

City Clerk

Attachments:
Exhibit A - Scope of Services
Exhibit B - Fee Schedule / Manner of Payment
Exhibit C - Facilities & Equipment to be Provided by DSRC
Exhibit D - General Provisions

EXHIBIT A

SCOPE OF SERVICES

1. Representatives. DSRC Representative for this Agreement is:

Ray Tretheway, President
Downtown Sacramento Revitalization Corporation
c/o Economic Development Department
915 I Street, 3rd Floor, Sacramento, CA 95814
(916) 808-7223 (telephone) / (916) 808-8161 (fax)

All CITY questions pertaining to this Agreement will be referred to the DSRC Representative as set forth above. All correspondence to DSRC shall be addressed to the address set forth above or such other address as DSRC shall designate in writing.

CITY Representative for this Agreement is:

Denise Malvetti, Sr. Project Manager
City of Sacramento
Economic Development Department
915 I Street, 3rd Floor, Sacramento, CA 95814
(916) 808-7064 (telephone)/ (916) 808-8161(fax)

All DSRC questions pertaining to this Agreement will be referred to the CITY Representative as set forth above. All correspondence to CITY shall be addressed to the address set forth above or such other address as DSRC shall designate in writing.

2. Scope of Work.

a. Term: The services to be performed by DSRC under this Agreement shall commence on the date that Greyhound provides CITY with notice of intent to occupy the premises owned by CITY located at 420 Richards Boulevard, and shall continue until either Party terminates this Agreement as set out in Exhibit D.

b. Services to be Provided: DSRC agrees to provide property management services related to enforcement of the Greyhound Lease, the investment and expenditures of the Capital Reserve Account, and undertaking Redevelopment Projects as described below with the Greyhound Lease proceeds as follows:

I. General Administration:

- Coordinate with CITY and Greyhound with regard to the relocation of Greyhound's operations to the new Greyhound Terminal after CITY has completed construction of the Terminal and the related improvement of the premises. Coordinate with Greyhound to

provide public notice of the relocation activities and the date when Greyhound will commence operations at the new Terminal.

- Notify Greyhound of its lease obligations and rent schedule.
- Attend meetings with CITY and Greyhound to address lease issues.
- Serve as designated person for Greyhound to contact CITY and coordinate any Greyhound Lease issues with CITY personnel and adjacent property owners.
- Provide information to CITY, Greyhound and the public regarding the Greyhound Terminal operations as necessary.
- If requested by CITY, enforce the construction contract warranties for the Greyhound Terminal and oversee the warranty work to remedy any building or fixtures and equipment defects that may be alleged by Greyhound.
- Establish and maintain all files and records related to the Greyhound Lease, the Capital Reserve Account and the Redevelopment Projects.

II. Accounting Services:

- Prepare and process billing statements per the Greyhound Lease rent schedule to send to Greyhound for payment.
- Monitor Greyhound's payment of rent, taxes and utilities per the terms of the Greyhound Lease.
- Prepare quarterly financial statements setting out all rent payments received and allocation of the payments to the DSRC, CITY and to the specified accounts per the terms of Exhibit B.

III. Lease Enforcement:

- Inspect the Greyhound Terminal and premises on a regular basis to insure that Greyhound properly maintains the building, improvements, fencing and landscaping, and that trash and debris are removed so that the premises is maintained in a safe, sanitary and attractive condition.
- Verify on a regular basis that Greyhound provides the specified security patrol services and monitors the security cameras.
- Verify that Greyhound maintains the required insurance coverages, which are to be renewed annually.
- Ensure that Greyhound does not permit any unauthorized vendors or persons on the premises or to loiter on or near the premises.
- Notify CITY immediately in the event that Greyhound fails to (i) make its rent payment on time and in the required amount, (ii) pay the taxes and utilities when due, and (iii) pays any contractors or vendors who performed work or services for Greyhound on the premises.
- DSRC shall not declare that Greyhound is in default of its obligations under the Greyhound Lease or commence an unlawful detainer enforcement action against Greyhound without the

express written consent of CITY. If requested by CITY, coordinate with CITY to enforce the lease obligations and to commence eviction proceedings if CITY determines that Greyhound has violated any material lease term.

VI. Capital Reserve Account:

- With the specified portion of Greyhound Lease proceeds, establish a Capital Reserve Account to fund equipment replacements, building modifications and upgrades, and other related expenses.
- Coordinate with CITY for expenditure of the Capital Reserve Account funds and if requested, oversee the work and coordinate the work schedule with Greyhound.

V. Redevelopment Projects:

- With the specified portion of Greyhound Lease proceeds, establish a Redevelopment Project Account to fund activities and projects in accordance with the DSRC's Bylaws and Articles of Incorporation to revitalize the following benefited regions of the CITY: the Merged Downtown Redevelopment Project Area, the River District Redevelopment Project Area and/or the Railyards Redevelopment Project Area.
- Provide CITY with an annual report regarding the Redevelopment Project Account expenditures.

EXHIBIT B

FEE SCHEDULE / MANNER OF PAYMENT

1. **DSRC's Compensation and Fund Retention.** DSRC shall be paid for its services under this Agreement, establish specified accounts, and shall remit payment to CITY with the monthly rent payments received from Greyhound as follows:
 - a. Retain fifteen percent (15%) in consideration for DSRC's property management services;
 - b. Set-aside five percent (5%) into a Capital Reserve Account to be held by DSRC to cover the costs of equipment replacements, building modifications and upgrades, and other related expenses for the Greyhound Terminal, with DSRC's expenditures from this account subject to CITY's prior approval;
 - c. Set-aside forty percent (40%) into a Redevelopment Project Account for DSRC's investment in redevelopment activities and projects as referenced in Exhibit A; and
 - d. Pay CITY the remaining forty percent (40%) in consideration for CITY's costs to construct the Greyhound Terminal.

CITY reserves the right to negotiate changes to the foregoing compensation schedule if agreeable to both Parties and outlined by written amendment of this Agreement.

2. **CITY Payments.** DSRC shall make payment to CITY of CITY's share of the Greyhound rent proceeds semi-annually within thirty (30) days from the end of each six month period. DSRC shall be entitled to retain any interest that may have accrued from the Greyhound rent deposits prior to the payment due date. Each payment shall be accompanied by a written statement that sets out all of the amounts paid by Greyhound and all of the authorized deductions under the terms of the Greyhound Lease and this Agreement.
3. **DSRC Liability Limited.** If Greyhound fails to pay rent or to make any other payment required by the Greyhound Lease, or voluntarily or involuntarily files for bankruptcy protection, DSRC shall not be liable to CITY for such lost rent, other payment, or related monetary damages. If CITY invokes its right to terminate the Greyhound Lease prior the expiration of that lease term to allow for Greyhound to occupy Sacramento Intermodal Transportation Facility or for any other reason, CITY shall be solely responsible to compensate Greyhound for its relocation costs or other costs or damages. In addition, CITY shall be solely responsible to pay any monetary damages or other costs of Greyhound stemming from any dispute between CITY and Greyhound regarding the termination of the Greyhound Lease based on Greyhound's or CITY's

default. CITY's indemnity obligation to DSRC shall include payment of any costs or monetary damages owed to Greyhound caused by acts or omissions of DSRC to the extent those costs or damages resulted from the acts or omissions of CITY employees acting on behalf of DSRC.

4. **CITY Liability Limited.** If CITY terminates the Greyhound Lease for any reason, CITY shall not be liable to DSRC for any anticipated compensation that is unpaid due to CITY's termination of the Greyhound Lease and this Agreement.

EXHIBIT C

FACILITIES AND EQUIPMENT TO BE PROVIDED BY DSRC

DSRC will not furnish any facilities or equipment for this Agreement. CITY acknowledges that DSRC personnel will work in CITY offices and use CITY facilities and equipment to perform services under this Agreement as long as DSRC personnel performing services under this Agreement are CITY employees.

EXHIBIT D

GENERAL PROVISIONS

1. **No Joint Venture.** This Agreement does not create a joint venture, partnership, or any other legal relationship of association among the Parties. Each Party is an independent legal entity and is not acting as an agent of the other Party in any respect. Notwithstanding that CITY employees may present this Agreement to the board of directors of the DSRC for approval and that CITY officers serve on the DSRC board of directors; the DSRC has a separate and independent board of directors and legal advisor, CITY officials that serve on the DSRC board do not constitute a majority of its members, and DSRC board's approval of this Agreement is an independent and separate act from the City Council's approval of this Agreement on behalf of CITY.
2. **DSRC Not CITY Agent.** Except as CITY may specify in writing, DSRC and DSRC's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent, except as agent of CITY for management of the Greyhound Lease. CITY and CITY's personnel shall have no authority, express or implied, to bind DSRC to any obligations whatsoever, except when CITY employees are providing the services specified in this Agreement on behalf of DSRC.
3. **Independent Contractor.**
 - A. It is understood and agreed that CITY and DSRC are independent contractors and that no relationship of employer-employee exists between the Parties hereto for any purpose whatsoever, notwithstanding the fact that CITY employees may provide services to DSRC under a separate Administrative Services Agreement. DSRC is not required to make any deductions or withholdings for employee taxes or benefits from the compensation payable to CITY under the provisions of this Agreement. As an independent contractor, CITY hereby agrees to indemnify and hold DSRC harmless from any and all claims that may be made against DSRC based upon any contention by any of CITY's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists between the Parties for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.
 - B. It is further understood and agreed by the Parties hereto that DSRC, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished by the services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by DSRC for accomplishing such results. To the extent that DSRC obtains permission to, and does, use CITY's facilities, space, equipment or support services in the performance of the services under this Agreement, this use shall be at the DSRC's sole discretion based on the DSRC's determination that such use will promote DSRC's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, CITY does not require that DSRC use CITY facilities, equipment or

support services or work in CITY's offices in the performance of services under this Agreement.

- C. If, in the performance of this Agreement, any third persons are employed by DSRC, such persons shall be entirely and exclusively under the direction, supervision, and control of DSRC. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by DSRC. It is further understood and agreed that DSRC shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of DSRC's assigned personnel and subcontractors who are not CITY employees.
- D. Nothing in this Agreement shall be construed as to create an exclusive relationship between DSRC and CITY for the services to be provided. DSRC and CITY may each independently represent, perform services for, or be employed by such additional persons or companies as each Party sees fit, provided that there is no conflict with the performance of services or the obligations of the Parties hereunder.

- 4. **Standard of Performance.** If DSRC assigns employees or contractors to perform services under this Agreement who are not CITY employees, DSRC shall assign only competent personnel to perform said services pursuant to this Agreement.
- 5. **Time.** DSRC shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of DSRC's obligations under this Agreement. Neither Party shall be considered in default of this Agreement, nor be entitled to additional compensation, to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the Party.
- 6. **Assignment Prohibited.** DSRC may not assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
- 7. **Termination.** CITY and DSRC shall each have the right to terminate this Agreement for their convenience at any time by giving not less than fifteen (15) days written notice of such to the other Party and specifying the termination date; provided, however, that prior to terminating this Agreement for an alleged violation of its terms, the Parties shall attempt to resolve the dispute in accordance with Section 11 of this Agreement.
- 8. **Indemnity.** CITY shall indemnify, defend and save harmless DSRC, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by DSRC's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, for death, personal injury or damage to real or personal property resulting from any negligent

act or omission or willful misconduct of CITY, its officers, employees, subcontractors or agents in connection with the performance or nonperformance of services by CITY employees on behalf of DSRC under this Agreement, whether or not DSRC, its officers or employees reviewed, accepted or approved any service or work product performed or provided by CITY employees, and whether or not such liabilities are litigated, settled or reduced to judgment.

CITY shall, upon DSRC's request, defend at CITY's sole cost any action, claim or suit or portion thereof which asserts or alleges any such liabilities, whether well founded or not and whether or not such action, claim or suit also asserts or alleges negligent or wrongful conduct by DSRC, its officers or employees, so long as the action, claim or suit alleges negligence or misconduct by a CITY officer or employee. If a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to the DSRC's negligence or willful misconduct separate and apart from any act or omission by a CITY officer or employee, DSRC shall pay the portion of damages which is allocated to the DSRC's acts, negligence or willful misconduct. As used herein, the phrase "negligence or willful misconduct" shall not include the passive negligence of the DSRC, its officers or employees in reviewing, accepting or approving any service or work product performed or provided by CITY employees.

If DSRC hires or employs any person or entity to perform services for CITY under this Agreement who is not a CITY officer or employee, in that event CITY may require DSRC to name CITY as an additional insured on its general liability and automobile insurance coverages and DSRC shall indemnify, defend and save harmless CITY, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, for death, personal injury or damage to real or personal property resulting from any negligent act or omission or willful misconduct of those employees, contractors or agents of DSRC that are not City employees in connection with their performance or nonperformance of services on behalf of DSRC under this Agreement, whether or not CITY, its officers or employees reviewed, accepted or approved any service or work product performed or provided by DSRC, and whether or not such liabilities are litigated, settled or reduced to judgment. DSRC shall, upon CITY's request, defend at DSRC's sole cost any action, claim or suit or portion thereof which asserts or alleges any such liabilities, whether well founded or not and whether or not such action, claim or suit also asserts or alleges negligent or wrongful conduct by CITY, its officers or employees, so long as the action, claim or suit does not allege negligence or misconduct by a CITY officer or employee.

9. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
10. **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any

occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event. Failure by either Party to complain of any action or non-action on the part of the other Party or to declare the other in default, irrespective of how long such failure may continue, shall not be deemed to be a waiver of any rights hereunder.

- 11. Disputes; Enforcement of Agreement.** Where a dispute exists between the Parties regarding their respective obligations and commitments under this Agreement, such dispute shall be resolved by mediation, arbitration utilizing the commercial arbitration procedures of JAMS, or some other alternative dispute resolution procedure mutually agreed upon by the Parties. The Parties agree to submit any disputes arising under this Agreement, which were not resolved through an alternative dispute resolution process, to a court of competent jurisdiction located in Sacramento, California. This agreement shall be governed, construed and enforced in accordance with the laws of the State of California.
- 12. No Third Party Beneficiaries.** Nothing contained herein is intended, nor shall this Agreement be construed, as an agreement to benefit any third parties including, without limitation, Greyhound and the property owners and businesses within the River District, Railyards and Downtown Sacramento areas.
- 13. Ambiguities.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes. Captions on sections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement. The Parties have each carefully reviewed this Agreement and have agreed to each term hereof. No ambiguity shall be presumed to be construed against either Party.
- 14. Entire Agreement.** This document, including all Exhibits and the Greyhound Lease, contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement, including, without limitation, the MOU. No alteration to the terms of this Agreement shall be valid unless approved in writing by CITY and DSRC.