

Meeting Date: 4/30/2013

Report Type: Consent

Report ID: 2013-00365



Title: Agreement: Administrative Services Agreement with the Downtown Sacramento Revitalization Corporation (DSRC)

Location: Downtown, Railyards and River District/Districts 3 and 4

Issue: The renewal of this agreement will allow the City's Economic Development staff to continue providing services to the DSRC for the next 18 months. Council approval is needed for agreements where the City provides services to an outside organization.

Recommendation: Pass a Motion: 1) authorizing the City Manager or his designee to execute the Administrative Services Agreement with the Downtown Sacramento Revitalization Corporation and 2) authorizing the City Manager or his designee to execute up to two, two-year extensions to the Agreement without the need for further City Council authorization so long as the cumulative amount of this Agreement and the extensions does not exceed \$100,000.

Contact: Denise Malvetti, Sr. Project Manager, (916) 808-7064, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID: 18001031

Attachments:

1-Description/Analysis

2-Admin Services Agreement

City Attorney Review

Approved as to Form
Michael Sparks
4/18/2013 9:19:54 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
4/15/2013 10:54:43 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 4/17/2013 11:41:19 AM

Description/Analysis

Issue Detail: In November 2004, the City Council consented to the establishment of the Downtown Sacramento Revitalization Corporation ("DSRC"). The DSRC was subsequently formed in December 2004 and received its tax-exempt status in late 2005. The DSRC is a 501(c)(3) non-profit corporation, and pursuant to its Articles of Incorporation was formed to lessen the burdens of government by assisting the City of Sacramento and the former Redevelopment Agency of the City of Sacramento to revitalize redevelopment project areas within the Downtown area by owning, acquiring, developing, financing (including but not limited to loaning money in connection with), assisting, leasing, and managing projects in the former River District, Railyards and Merged Downtown redevelopment project areas. Shortly after the DSRC was formed, the City and the DSRC entered into an Administrative Services Agreement to have the City provide the DSRC with the following staffing services: general administration, reporting requirements, strategic planning and marketing, and individual project management and coordination. The Agreement has been renewed several times since 2005 and is set to expire on April 30, 2013. The renewal of this Agreement would allow the City's Economic Development staff to continue providing staffing services to the DSRC for the next 18 months.

Policy Considerations: The recommendation is consistent with the City's goal to expand economic development throughout the City.

Economic Impacts: None.

Environmental Considerations: Entering into this Administrative Services Agreement does not constitute a project for the purposes of the California Environmental Quality Act (CEQA). (CEQA Guidelines, Cal. Code Regs. Title 14, §15378.)

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The DSRC was formed to assist the City and former Redevelopment Agency with achieving economic development goals in the former River District, Railyards and Merged Downtown redevelopment areas. The DSRC is currently involved in two City-supported projects, the management of the new Greyhound terminal and the 700 Block of K Street. With the elimination of Redevelopment in the State of California it is increasingly important for the City to partner with organizations like the DSRC.

Financial Considerations: The Administrative Services Agreement allows for the City to be reimbursed by the DSRC for staff time spent working on DSRC activities. The reimbursement over the 18 month term shall not exceed \$12,000.

Emerging Small Business Development (ESBD): Not applicable.



Downtown Sacramento Revitalization Corporation

ADMINISTRATIVE SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made at Sacramento, California, as of _____, 2013, 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, CITY shall provide to DSRC the services described in Exhibit A. CITY shall provide the services at the time, place, and in the manner specified in Exhibit A. CITY shall not be compensated for services outside the scope of Exhibit A ("Additional Services") unless prior to the commencement of such services: (a) CITY notifies DSRC in writing and DSRC agrees that such services are outside the scope of Exhibit A; (b) CITY estimates the additional compensation required for these additional services; (c) DSRC, 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.** DSRC shall pay CITY for services rendered pursuant to this Agreement as set forth in Exhibit B, unless pursuant to Paragraph 1, above, DSRC approves 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, Supplies and Equipment.** Except as set forth in Exhibit C, CITY shall, at its sole cost and expense, furnish all facilities, supplies and equipment, which may be required for furnishing services pursuant to this Agreement. DSRC shall furnish to CITY 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 the 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

Angelique Ashby
President

By: John F. Shirey,
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, Supplies & Equipment to be provided by CITY

Exhibit D - General Provisions

Exhibit E - Billing Rates

EXHIBIT A

SCOPE OF SERVICES

1. Representatives. DSRC Representative for this Agreement is:

Angelique Ashby, 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 CITY shall designate in writing.

2. Scope of Work.

a. Term: This Agreement shall be for the 18 month period commencing May 1, 2013 and ending October 31, 2014.

b. Services to be provided by City: CITY agrees to provide administrative support services related to the ongoing operations of DSRC. Services will include only the following:

I. General Administration:

- Coordinate/manage all professional service agreements for DSRC, including legal and accounting services.
- Preparation for, and management of, all DSRC Board meetings, including:
 - Preparing and posting meeting agendas.
 - Attending meetings.
 - Preparing and distributing minutes.
 - Coordinating all staff reports.

- Monitoring all noticing and disclosure requirements.
- Prepare and manage DSRC budget, as approved by the DSRC Board.
- Approve and process billing statements/invoices and any applicable financial disbursements on behalf of the DSRC.
- Serve as designated daily contact for DSRC.
- Establish and maintain all DSRC files and records.
- Provide information to the DSRC Board, contractors, the CITY, development partners and the public as necessary.

II. Reporting Requirements:

- Prepare and distribute annual status reports to DSRC, including operations activity (status/budget) and financial/accounting activity, which may be prepared by an appropriate contract service provider.
- Monitor all noticing and disclosure requirements.
- Assist with annual reporting requirements related to tax exempt status.

III. Strategic Planning and Marketing:

- Assist the Board in developing a long-term strategic plan for DSRC.
- Prepare and distribute information to the public and development partners as necessary.
- Represent DSRC to the real estate and development community and other private partners.
- Provide information to the private sector as needed to market DSRC services.

IV. Individual Project Management:

- Target projects meeting the long-term strategic direction of the DSRC.
- Negotiate individual project development and financing agreements in conjunction with DSRC's legal counsel and other CITY staff, on behalf of DSRC.
- Recommend development and financial participation actions to the Board.
- Manage DSRC assets, including negotiating and executing contracts for outside corporate asset management services, as approved by the DSRC Board.
- Maintain individual project files.

c. Services to be provided by DSRC: In consideration for the services provided by CITY, DSRC agrees to:

- Coordinate with CITY staff regarding the operations, annual budget and reporting for DSRC.
- Provide CITY information as necessary.
- Provide CITY with an annual report regarding the DSRC projects, activities and expenditures.

EXHIBIT B

FEE SCHEDULE / MANNER OF PAYMENT

1. CITY's Compensation.

DSRC shall reimburse the City in an amount not to exceed \$12,000 for staff time during the term of this Agreement for managing its corporate operations. City shall provide DSRC with quarterly billing statements showing the hours worked and work performed on DSRC's behalf by City, and payments shall be subject to review by the Chief Financial Officer and approved by President. Rates will be billed according to Exhibit E.

EXHIBIT C

FACILITIES, SUPPLIES AND EQUIPMENT

DSRC will not furnish any facilities, supplies or equipment for this Agreement. CITY staff will work in CITY offices and use CITY facilities and equipment to perform services for DSRC under this Agreement.

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; City Authority to Act on Behalf of DSRC.** 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. 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 or are otherwise specifically authorized in writing by DSRC to act on its behalf.
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 this 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 CITY, in the performance of its obligations hereunder, is subject to the control and direction of DSRC 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 CITY for accomplishing such results. To the extent that CITY obtains permission to, and does, use DSRC's facilities, space, equipment or support services in the performance of the services under this Agreement, this use shall be at the CITY's sole discretion based on the CITY's determination that such use will promote DSRC's efficiency and effectiveness.

- C. If, in the performance of this Agreement, any third persons are employed by CITY, such persons shall be entirely and exclusively under the direction, supervision, and control of CITY. 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 CITY. It is further understood and agreed that CITY shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CITY's assigned personnel and subcontractors.
- 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 CITY assigns employees or contractors to perform services under this Agreement who are not CITY employees, CITY shall assign only competent personnel to perform said services pursuant to this Agreement.
- 5. **Time.** CITY shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CITY'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.** No Party to this Agreement may 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 have the right to terminate this Agreement at any time by giving not less than Fifteen (15) days notice of such termination to the other party. If DSRC gives such notice of termination, CITY shall immediately cease rendering services pursuant to 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, 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.

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. **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, the property owners and businesses within the River District, Railyards and Downtown Sacramento areas.
12. **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.
13. **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. No alteration to the terms of this Agreement shall be valid unless approved in writing by CITY and DSRC.

EXHIBIT E

BILLING RATES

Sr. Project Manager	\$49.18 - \$73.75
Sr. Staff Assistant	\$25.13 - \$37.70