

**City Council
Agenda Memo**



**City Council
Meeting Date: 02-13-14**

TO: Mayor and City Council
FROM: Larry D. Gilley, City Manager
SUBJECT: FY14 Contract Amendment – Development Corporation of Abilene, Inc.

GENERAL INFORMATION

The Development Corporation of Abilene, Inc. (DCOA) approved on August 27, 2013, a budget for FY2014 that includes a contract renewal with the City of Abilene for Business Services with funding of \$1,535,343. On September 12, 2013, the City Council approved the contract. The contract provides for administrative, program support and legal services with the Department of Economic Development serving as staff to the DCOA for most of the contract support. FY14 administrative expenses are \$646,607, which includes a staff of 5 in Economic Development. Also included in the contract are \$189,070 for maintenance and other up-keep expenses for DCOA-owned properties, \$579,930 for operations and maintenance of the Abilene Laboratories building (f/k/a Abilene Life Sciences Accelerator) and lab on Pine St., and \$119,736 for property damage insurance premiums to cover all DCOA-owned properties under the City's self-insurance program.

SPECIAL CONSIDERATIONS

See page 2.

FUNDING/FISCAL IMPACT

None.

STAFF RECOMMENDATION

Staff recommends the City Council approve, by oral resolution, the amended FY14 renewal contract with the DCOA for Business Services. Staff also recommends City Council authorize the City Manager to execute the amended contract on behalf of the City.

BOARD OR COMMISSION RECOMMENDATION

The DCOA Board approved the FY2014 amended contract on January 30, 2014.

ATTACHMENTS

First Amended FY14 contract with the DCOA for administrative, program support and legal services.

Prepared by: Kim Tarrant, Business Services
Manager/Economic Development
Name: Larry Gilley
Title: City Manager

Item No. 6.9

Disposition by City Council
 Approved Ord/Res#
 Denied _____
 Other
_____ City Secretary

SPECIAL CONSIDERATIONS

There has been discussion in the past about changing the reporting structure for the Chief Executive Officer of the DCOA, who also serves as Director of the Department of Economic Development. Currently the CEO/Director is supervised by the City Manager. The proposed changes to the current contract are best summarized in the following excerpt from Attachment A of the amended contract:

5. The hiring, supervision, performance evaluation and termination of the Director shall be the sole responsibility of the DCOA Board, except where otherwise delegated herein to the City. The responsibility and authority for employment related actions shall be as follows:
 - a. The City, acting as the employer of record, shall have the sole authority and responsibility for disciplinary action, including termination, arising from a violation of the City's Policies and Procedures Manual unrelated to work product. The City shall notify the President of the DCOA prior to initiating any disciplinary action.
 - b. The Board shall have the sole authority and responsibility for disciplinary action, including termination, arising from performance issues and duties related to work product. All disciplinary action taken must comply with the City's Policies and Procedures Manual. The President of the DCOA shall notify the City Manager prior to initiating any disciplinary action.

THE STATE OF TEXAS X
 X KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TAYLOR X

THIS FIRST AMENDED AGREEMENT, effective the 1st day of March, 2014, by and between the **City of Abilene**, a municipal corporation, situated in Taylor and Jones Counties, Texas, acting by and through its City Manager, (hereinafter referred to as the "City"), and the **Development Corporation of Abilene, Inc.** (hereinafter referred to as the "DCOA" or the "Corporation") acting by and through its President and in accordance with the Development Corporation Act of 1979, as amended:

WITNESSETH:

That this Agreement replaces the agreement effective October 1, 2013, between City and DCOA. For and in consideration of the covenants, promises, and agreements set forth herein, it is mutually agreed as follows:

I. PURPOSE

That the City agrees to provide staffing for administrative and program support and legal services (hereinafter referred to as the "Staff") to the DCOA as requested by the Board of Directors of the DCOA (hereinafter referred to as the "Board"). During the term of this Agreement, the City's Director of Economic Development, as retained by the DCOA with the consent of the City, shall serve as Chief Executive Officer (sometimes hereafter referred to as "CEO") of the DCOA as described in section 5.09 of the DCOA Bylaws (herein referred to as Bylaws).

II. DUTIES

A. The City Agrees to:

1. Follow the provisions of the Bylaws, which are incorporated herein by reference, as may be amended from time to time, including but not limited to those Bylaws associated with short and long-term planning, specifically Section 4.04 of the Bylaws, as closely as possible to ensure the DCOA's economic development efforts are in line with the evolving economic development needs of the Abilene community. Efforts are to be made to conduct at least once each year a planning session with the Board to determine policy changes needed in the Staff's efforts to stay competitive in the dynamic economic development environment.
2. Consistent with Section 5.09 of the Bylaws, the Chief Executive Officer of DCOA (otherwise known as the Director of Economic Development) shall recommend policies and procedures to the Board for adoption by the Corporation as needed, including financial, accounting, and purchasing policies and

procedures. Unless otherwise stipulated, the Staff shall follow the policies and procedures of the City's Department of Finance when conducting DCOA financial business. The policies and procedures of the City's Purchasing Department shall be followed as closely as is feasible for any DCOA project, except in cases where it is more advantageous to follow state law regarding bids and purchases for development corporations.

3. Provide all necessary accounting and financial management services through the City's Finance Department. The Finance Department will work with the Staff to keep complete and current books and records of all DCOA activities and provide the DCOA monthly reports of its fund balance and sales tax revenue.

The Staff will continue to revise, as needed, the internal tracking system for all of the DCOA's operating and project contracts to ensure requests for payment are recorded and contract amounts are not exceeded.

4. Negotiate, administer and monitor all contracts on behalf of the DCOA with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks. The City's Internal Auditor shall conduct an annual review of this Agreement.
5. Prepare a budget for the forthcoming year for review and final approval by the Board. The budget shall be prepared in accordance with the procedures prescribed for all City departments and included with the proposed overall City budget for approval by the Abilene City Council.
6. Provide sufficient support staff for the operation of DCOA programs. With the exception of the Director of Economic Development/CEO of the DCOA, the City shall be responsible for the hiring, evaluation, and/or termination of personnel, who shall be City of Abilene employees and subject to all personnel policies thereof. The foregoing notwithstanding, the City Manager or his designate shall meet with the Board, as requested from time to time in executive session regarding personnel matters to receive the Board's input regarding such matters.
7. Ensure that the Staff carries out responsibilities and duties as specified by the Board and accepted by the City.
8. Review the existing incentive guidelines, loan program and related lending policies as needed, make recommendations to the Board to ensure that such guidelines, programs and policies are in compliance with all relevant local, state and federal requirements and to serve the needs of the community.
9. In accordance with Guidelines for Public Assistance and Administrative Policy and Incentive Guidelines, adopted by the Board, review and recommend to the Board approval or denial of all eligible applications for financial assistance. The DCOA's Guidelines for Public Assistance and Administrative Policy does apply

and is incorporated by reference herein for all purposes.

10. Continue to build upon existing relationships with local financial institutions to promote the development of new and existing businesses.
11. Maintain records of DCOA activities in accordance with the same state-mandated records retention schedule that is followed by the City.
12. Provide information on local, state, and federal permit and licensing requirements and act as a liaison between the clients and other City departments.
13. Inform/report quarterly to the Board the status of the DCOA's loan portfolio.
14. Administer the Enterprise Zone, Tax Abatement, and other state incentive programs as well as other programs as directed by the Board when directly related to programs and projects of the DCOA.
15. Continue to coordinate with local trade schools, colleges and universities, and the Texas Tech Small Business Development Center to identify and develop programs to meet the training, educational and business counseling needs of the Abilene business community.

B. The DCOA Agrees to:

1. Provide the City funding in the amount of \$646,607, subject to amendment if there are changes to staff or compensation adjustments, for the one-year period ending September 30, 2014, for the operational activities (including provision of the Staff) of the Business Services Division of the Department of Economic Development .
2. Provide to the City funding in the amount of \$189,070 for the one-year period ending September 30, 2014 for the maintenance and upkeep of and other expenses related to all DCOA-owned facilities and other properties, as needed, whether vacant or occupied, in accordance with any existing lease agreement. In addition, provide funding in the amount of \$119,736 for property damage insurance premiums for covering the DCOA-owned properties under the City's self-insurance plan .
3. Provide to the City funding in the amount of \$579,930 for the one-year period ending September 30, 2014 for the maintenance and upkeep of and other expenses related to the Abilene Laboratories building (f/k/a Abilene Life Sciences Accelerator) at 1325 Pine St., parking lot at 1342 Walnut St., and Laboratory at 842 Pine St., in accordance with the Master Lease Agreement dated April 29, 2009 between the DCOA and Abilene Life Sciences Foundation, Inc.. Also included is maintenance and upkeep of the adjacent property located at 922 N. 13th St., otherwise known as the Stone Shop.

4. Grant authority to its Chief Executive Officer to disburse funds and incur expenses on behalf of the DCOA as approved from time to time by the Board.
5. Develop budget priorities and recommendations for City Council consideration with respect to the economic development programs of the DCOA, as specified in the Corporation's Bylaws.
6. Recruit, select, and recommend the hiring of a Director of Economic Development/CEO of the DCOA to the City of Abilene under the conditions set forth in Attachment A to this First Amended Contract.

III. LEGAL SERVICES

The City Attorney, or an assistant City Attorney designated by the City Attorney, shall be legal advisor of, and attorney for, the DCOA. Such legal services shall include representation of the entity in litigation and legal proceedings, so long as the interest of the entity is not adverse to that of the City, and review of documents, contracts and legal instruments as to form and legality. The DCOA retains the right to hire an attorney of its own choice at its own expense whenever it so chooses, or anytime the City Attorney determines that his/her office is unable to represent both the DCOA and City.

IV. JOINT ECONOMIC DEVELOPMENT PROGRAMS

It is expressly understood by the City and the DCOA that the DCOA reserves and retains the right to hear all appeals of any issues which may arise under this Agreement. Under the terms of this Agreement, the Chief Executive Officer shall report to the Board and to the City Manager if administering joint economic development programs of the DCOA and the City.

The Director of Economic Development shall act as the DCOA's Chief Executive Officer and is hereby expressly given the right and power by the DCOA to sign all applications, and documents as approved by the Board, in determining any joint economic development program of the DCOA and the City.

It is expressly understood that the DCOA retains the right to pursue other avenues for economic development, when it is determined to be in the best interest of the DCOA to do so, and this Agreement shall not limit the DCOA's right to pursue such interests.

V. PROGRAM INCOME

All program income resulting from the use of DCOA funds as provided under this agreement shall be returned to the unobligated fund balance of the DCOA.

VI. TERMINATION

This Agreement may be terminated by the DCOA or the City, in whole, or from time to time, in part, whenever such termination is determined by the Board or the City Council, as the case may be, to be in the best interest of the DCOA or the City. Termination will be effective sixty (60) days after delivery of Notice of Termination specifying to what extent performance or work under the Agreement has been terminated and specifying that the Agreement shall be terminated sixty (60) days after receipt by the notified party.

If no notice of termination is received from either party prior to August 2, 2014, this Agreement expires without notification on September 30, 2014.

VII. OFFICIALS NOT TO BENEFIT

No public official of the governing body of the City or the DCOA who exercises any functions or responsibilities in the review or the approval of the undertaking or carrying out of any project hereunder, shall participate in any decision relating to the Agreement which affects his personal interest, nor shall he have any personal or pecuniary interest direct or indirect in this Agreement or proceeds thereof.

VIII. MINORITY AND SMALL BUSINESSES

The City will encourage and utilize small businesses and minority suppliers and services to the extent possible under present law for use in completion of this Agreement.

IX. EQUAL EMPLOYMENT OPPORTUNITIES

During the performance of this Agreement, the City agrees as follows:

The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The City will take affirmative action to ensure that applicants and their employees are treated equally without regard to race, color, religion, sex, national origin, or disability. The City agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause. The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

X. AGREEMENT:

This Agreement shall constitute the sole agreement between the City and the DCOA relating to the object of this Agreement and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

WITNESS our hands to this AGREEMENT this _____ day of _____, 2014.

**DEVELOPMENT CORPORATION OF
ABILENE, INC.**
174 Cypress, Ste. 301
Abilene, Texas 79601

CITY OF ABILENE
P.O. Box 60
Abilene, Texas 79604

Dave Copeland, President

Larry D. Gilley, City Manager

ATTEST:

ATTEST:

Dani Ramsay, Secretary/Treasurer

Danette Dunlap, City Secretary

Approved as to form:

T. Daniel Santee, City Attorney

ATTACHMENT A

DIRECTOR OF ECONOMIC DEVELOPMENT/CEO OF THE DCOA

The City is responsible for providing accounting, administrative staff, and legal support services to the DCOA. However, the personnel management responsibilities for the position of the Director of Economic Development/CEO of the DCOA (Director) for the term of this Agreement are as follows:

1. The City will serve as the employer of record for the Director.
2. The Director shall be considered a City employee for the purposes of payroll disbursement and all fringe benefits, including retirement, medical and life insurance, vacations, sick leave, holidays, and any other benefits normally extended to City employees. Costs incurred by the City for these benefits, and all salary for the Director will be reimbursed by the DCOA.
3. Both the Board and the City agree that the City of Abilene Policies and Procedures Manual will govern the general employment responsibilities and actions of the Director.
4. The hiring, supervision, performance evaluation and termination of the Director shall be the sole responsibility of the DCOA Board, except where otherwise delegated herein to the City. The responsibility and authority for employment related actions shall be as follows:
 - a. The City, acting as the employer of record, shall have the sole authority and responsibility for disciplinary action, including termination, arising from a violation of the City's Policies and Procedures Manual unrelated to work product. The City shall notify the President of the DCOA prior to initiating any disciplinary action.
 - b. The Board shall have the sole authority and responsibility for disciplinary action, including termination, arising from performance issues and duties related to work product. All disciplinary action taken must comply with the City's Policies and Procedures Manual. The President of the DCOA shall notify the City Manager prior to initiating any disciplinary action.
5. The number of positions, job descriptions, salary, and salary range for the administrative and support positions shall be within the discretion of the City, but shall be, in part, based upon a recommendation from the DCOA Board and the Director. Decisions relating to salary increases, if any, for the Director, are the sole responsibility of the Board. Decisions relating to salary increases, if any, for the Staff, shall be the sole responsibility of the City. All salary adjustments shall be dependent on available funding and consistent with the City's compensation plan strategies as approved through the annual budget process. Deviations, when necessary, should be by mutual agreement between the City and the DCOA Board.