



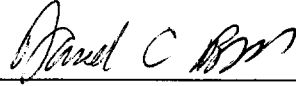
City of Carson

Report to Mayor and City Council

November 15, 2011
New Business Consent

SUBJECT: CONSIDER AN AGREEMENT FOR CONSULTING SERVICES WITH MICHAEL SEALE RELATED TO THE TRANSITIONAL SUBSIDIZED EMPLOYMENT PROGRAM


Submitted by Clifford W. Graves
Economic Development General Manager


Approved by David C. Biggs
City Manager

I. SUMMARY

The next round of the Transitional Subsidized Employment (TSE) Program is beginning. The city has used a consultant, Michael Seale, to operate the program. A new agreement (Exhibit No. 1) is provided for the City Council's consideration.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE an agreement with Michael Seale for an amount not to exceed \$84,000.00.
2. AUTHORIZE the Mayor to execute the agreement following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

The second round of the Transitional Subsidized Employment (TSE) Program is now ending with 75 people having worked at various employers including the city. Staff is working to place as many as possible in permanent positions. A new round is starting, which includes at least 27 positions but possibly several times that. The Southbay Workforce Investment Board (WIB) expects additional allocations by January 2012.

The city is paid \$1,200.00 per person placed into employment and an additional \$400.00 for each of those people employed for a specified period after the program. Staff proposes shifting from an hourly rate to a per person rate. Because of the fluidity of the city's allocation, it is not possible to estimate a total program cost. Setting Mr. Seale's compensation at 60% of the city's fee approximates his hourly rate in the previous round of the program, and provides flexibility as the city's allocation increases.

The agreement assumes 100 placements and 50 retained in employment. This is likely in excess of the city's allocation, and 50% retention would be good but unlikely. The biggest barrier to retention is documenting the work status of participants.

It can be difficult to locate them after the program and provide the necessary documentation, the other work centers in the WIB report the same issue. In any case, setting a rate per placement ensures the city will not spend more than necessary whatever the allocation may be. The program is scheduled to end March 31, 2012, with a probable extension, likely Mr. Seale's agreement will expire December 31, 2012.

Mr. Seale has done an excellent job of administering the TSE program. Carson has exceeded all program benchmarks, and an audit by the WIB found everything to be completely in order. He pushes the job seekers to succeed in what for many people is their first job.

V. FISCAL IMPACT

Because the number of positions is very much in flux, it is unclear what the total impact will be. The city is currently allocated 27 slots. At the suggested rate for Mr. Seale, the General Fund would receive \$12,960.00 net for the initial placements and, if ten of those people secured long-term employment by the closing date of the program, the city would receive an additional net of \$1,600.00. Because the WIB has already indicated there will be an additional allocation, those numbers can rise significantly.

VI. EXHIBITS

1. Agreement with Michael Seale. (pgs. 4-15)

Prepared by: Barry Waite, Business & Employment Development Manager

TO: Rev091911

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by City Council

Date_____ Action_____

CITY OF CARSON
CONTRACT SERVICES AGREEMENT FOR
PROFESSIONAL SERVICES

BUSINESS PROGRAM FACILITATOR

This Contract Services Agreement ("Agreement") is made and entered into this 21st day of November, 2011, by and between the City of Carson a municipal corporation ("City"), and Michael Seale, doing business as an individual , (hereinafter "Consultant").

RECITALS

A. In order to assure the timely completion of the Transitional Subsidized Employment Program (hereinafter "Program"), the City has determined that it would be desirable for the City to retain the Consultant as a "Program Coordinator" to provide the following services: (i) identify and secure placement locations for Program participants, (ii) ensure proper completion of all required documents and case tracking of Program participants, (iii) assist the City's staff in meeting the Program requirements, (iv) provide follow up for Program participants after placement, and (v) ensure compliance with all Program requirements, each service being more particularly described in the Consultant's proposal set forth in Exhibit "A" attached hereto.

B. City desires to retain Consultant as an independent contractor to provide professional services.

C. Consultant represents that he is fully qualified to perform such services by virtue of his experience, training and education.

NOW, THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as *Exhibit "A"* and incorporated herein by reference. Consultant warrants that all work or services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as *Exhibit "B"* and incorporated herein by this reference. In the event of a conflict between the provisions of *Exhibit "B"* and any other provisions of this Agreement, the provisions of *Exhibit "B"* shall govern.

1.2 Compliance with Law. All work and services rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes,

rules and regulations of the City and any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

2.0 TERMS OF AGREEMENT

2.1 Schedule of Performance

This Agreement is effective November 21, 2011, and shall remain in effect until December 31, 2012, unless earlier terminated pursuant to Section 2.2.

2.2 Termination Prior to Expiration of Term

Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as maybe specifically approved by the Contract Officer. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for such additional services specifically authorized by the Contract Officer. City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

3.0 COMPENSATION

3.1. Contract Sum

City agrees to compensate Consultant for his services according to the fee and payment schedule set forth in Exhibit "C", and incorporated herein by this reference, but not exceeding the maximum contract amount of eighty-four thousand dollars (\$84,000) ("Contract Sum").

3.2 Method of Payment

Provided the Consultant is not in default under the terms of this Agreement, in any month in which the Consultant wishes to receive payment, no later than the first (1st) working day of such month, Consultant shall submit to the City, an invoice describing the tasks performed the previous month. City shall pay the Consultant's invoices no later than the last working day of the month.

Consultant shall not be entitled to any other compensation or benefits from City, including insurance. In the event of a billing dispute or the City, in its discretion, determines that services have not been performed satisfactorily, the Consultant shall not be entitled to payment of any disputed amount until the dispute is resolved.



The Consultant shall assume all customary and ordinary expenses incurred in connection with the performance of this Agreement. Such ordinary expenses shall include, without implied limitation, document reproduction expenses, computer/internet/telephone usage, and permitted access to the Carson Career Center's offices.

Services and expenses that are above the ordinary and are required shall not be reimbursable unless previously authorized in writing by City's designee.

4.0 COORDINATION OF WORK

4.1 Representative of Consultant

Michael Seale is hereby designated as the Transitional Subsidized Employment (TSE) Coordinator being the principal agent/representative and Consultant authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection therewith.

4.2 Contract Officer

Barry Waite, Business Development Manager, is hereby designated as being the representative of the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Manager shall have the right to designate another Contract Officer by providing written notice to Consultant.

4.3 Prohibition Against Subcontracting or Assignment

Consultant shall not contract with any entity to perform in whole or in part, the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Consultant

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall at all times remain solely responsible for the services to be provided pursuant to this Agreement, regardless of whether Consultant should choose to employ any agent(s), employees(s) or other representative(s) to perform any or all such service.

Consultant shall perform services herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. While performing services hereunder, the City and Consultant acknowledge that Consultant is



an independent contractor and not an officer nor employee of the City. Consequently, Consultant shall pay all personal State and federal taxes as an independent contractor and acknowledges that, as an independent contractor, Consultant is not covered under California workers' compensation, unemployment insurance or other employment-related laws.

5.0 MISCELLANEOUS

5.1 Covenant Against Discrimination

Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

5.2 Insurance

1. Insurance. Unless otherwise authorized by City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,00.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability or Error and Omissions Insurance. A policy of professional liability insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

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All of the above policies of insurance shall be primary insurance. The general liability policy shall name the City, its officers, employees and agents ("City Parties") as additional insureds and shall waive all rights of subrogation and contribution it may have against the City and the City's Parties and their respective insurers. All of said policies of insurance shall provide that said insurance may be not cancelled without providing ten (10) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work or services under this Agreement shall commence until Consultant has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances.

In the event that the Consultant is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 4.1.

5.3 Indemnity

(a) Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend, with Counsel chosen by City, and hold harmless City and the City's Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees of subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

(b) Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, with Counsel chosen by City, and shall hold and keep harmless the City and all of its officers, employees, volunteers, attorneys, agents and assigns thereof from all claims, demands, causes of action, costs, expenses, liability, loss, damages or injury, in law or equity that may at any time arise or be set up

because of injuries to or death of persons, including wrongful death, or damage to, loss, or theft of property, including City's personnel and property, in any manner arising out of, or in the course of, the performance of this contract or incident to any alleged acts, omissions or willful misconduct of Consultant, Consultants subcontractors, officers, employees, agents and representatives arising out of or in connection with the performance of services of this Agreement, including without implied limitation, the payment of all consequential damages and attorney's fees and other related costs and expenses. Consultant shall defend, with counsel chosen Consultant, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its elected officials employees, volunteers, attorneys, agents and assigns. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City and/or its elected officials, employees, volunteers, attorneys and agents in any such suit, action or other legal proceeding. Consultant shall reimburse City, its elected officials, employees, volunteers, attorneys, agents and assigns for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its board members, superintendent, employees, volunteers, attorneys, agents and/or assigns.

5.4 Non-liability of City Officers and Employees

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

5.5 Conflict of Interest

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

5.6 Notice

Any notices, bills, invoices or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail postage prepaid, to the addresses below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

City:

City of Carson
701 East Carson Street
Carson, CA 90745
Attention: Barry Waite
Business Development Manager
Phone:
Email:

Consultant:

Michael Seale
17701 Avalon Blvd. #1
Carson, CA 90746
Phone: 310-527-2706 / 310-503-1961
Email:

5.7 Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

5.8 Integration; Amendment

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

5.9 Severability

In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

5.10 Waiver

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party

of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

5.11 Attorney's Fees

If either party to this Agreement is required to initiate or defend or be a party to any action or proceeding in any way connected to this Agreement, the prevailing party in such action or proceeding, in addition to other relief which may be granted, whether or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

5.12 Licensing

Consultant shall, during the term of this Agreement, obtain and maintain all licenses, certificates, permits and approvals of whatever nature that are legally required to provide the services required pursuant to this Agreement.

5.13 Compliance With Laws

Consultant shall keep fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the provision of services. In the event Consultant performs any work contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising there from.

5.14. Governing Law /Venue

This Agreement shall be governed by the laws of the State of California. This Agreement shall not be governed by the Uniform Commercial Code. To the extent that there is to be delivery or performance of services under this Agreement, such services will not be deemed "goods" within the meaning of the Uniform Commercial Code. In The event of litigation the parties agree that the appropriate venue shall be the Los Angeles County Superior Court, Central Division and/or the federal Court within the City of Los Angeles.

5.15. Entire Agreement

It is understood and agreed that this Agreement sets forth the entire understanding of the parties regarding the subject matter thereof and no modification or amendment to this Agreement shall be binding unless said modification or amendment is in writing and duly executed by the parties.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

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"City"

ATTEST:

CITY OF CARSON

By: _____
City Clerk

By: _____
Jim Dear, Mayor

"Consultant"
MICHAEL SEALE

By: _____

Approved as to form:
ALESHIRE & WYNDER LLP

By: _____
City Attorney

[END OF SIGNATURES]

EXHIBIT "A"

SCOPE OF SERVICES

Proposal for Transitional Subsidized Employment (TSE) Dedicated Program Consultant Michael Seale

November 21, 2011, to December 31, 2012

The TSE program is a federal program to assist participants in the CalWORKs/GAIN program to receive compensated work experience. Completion of TSE will require a dedicated staff person to successfully operate and coordinate the elements of the program.

Michael Seale will operate the program for the City. His responsibilities will include:

- Track participants for 90 days.
- If possible, place at least 50% of Program participants in unsubsidized employment.
- Identify resources such as on the job training to assist participants and businesses in gaining permanent employment.
- Complete and maintain verification of employment forms.
- Assist employers in developing appropriate jobs for participants.
- Assist employers in complying with Program requirements
- Work with South Bay WIB staff to stay abreast of Program changes
- Assist the City's staff in placing Program participants in unsubsidized employment.
- Provide follow up for Program participants after placement:
- Ensure compliance with all Program requirements

Mr. Seale would provide program information, updates, status reports, proposals, participant information and any other documents or information concerning the operation of the City's program to Mr. Barry Waite, Business Development Manager. The consultant shall utilize a designated area on the City's premises on a limited basis as need to work with program participants, otherwise he would work primarily from his own office.

Mr. Seale will work approximately 30 hours per week, but may work up to a maximum of 40 per week. If more hours are needed in any week, Mr. Seale will accommodate the varying needs as approved by the City.

EXHIBIT "B"
SPECIAL REQUIREMENTS

NONE.

EXHIBIT "C"

SCHEDULE OF COMPENSATION

The rate for Michael Seale is 60% of the fee paid to the city per participant. The current rate paid to the city is \$1,200.00 per initial placement and \$400.00 per person retained in employment. The total value of this agreement is not to exceed \$84,000.