



A COMMUNITY OF CHOICE

Planning and Development Department

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MEMO

To: Downtown Development Authority Board of Directors
From: Charles W. Bloom, AICP, Planning and Development Director
Subject: Updated Memorandum of Agreement between the City and the Downtown Development Authority
Date: March 13, 2023

Background:

Since consideration of the Memorandum of Agreement (MOA) last Friday, March 3, 2023, we have identified several necessary agreement modifications. The modifications were requested after further review by the City Treasurer, Planning and Development Director, and City Attorney.

Modifications are as follows:

1. Changing the City Department from "Planning Department" to "Planning and Development Department" throughout the document.
2. Changes to subsections 4.d and e. as follows:

d. The City Planning and Development Department ~~of Cheyenne Treasurer's Office~~ shall receive, manage, and account for all funds and revenue associated with the DDA Board including, but not limited to the following: mill levy taxes; DDA Board reserves; ~~direct funding from the City~~; DDA Board self-generated revenue; and grant funding. The City Treasurer's Department will provide oversight for the management of these funds which will be ~~These funds will be accounted for separately by the City and~~ are subject to all rules and regulations previously applicable to the DDA Board including,

but not limited to, City access to all accounting records, books and archives.

e. Depending on the availability of funds, the City will provide staffing services, including payroll and benefits.

3. Deleting section 5.e

d. Work with the City Planning and Development Director to identify and prioritize the goals of the DDA Board and develop both short and long terms plans to implement those goals.

e. ~~Depending on the availability of funds, the City will provide staffing services, up to and including payroll and benefits in a value of up to Two Hundred and Fifty Thousand Dollars (\$250,000) per year. Depending upon availability of funds, provide Two Hundred Fifty Thousand Dollars (\$250,000) of funding annually to the City of Cheyenne Planning Department for the purposes outlined in this Agreement.~~

~~f~~e At all times, respect the time and resources of the City Planning and Development Department so the City Planning and Development Department Director can efficiently and effectively manage the work needed to accomplish the goals of the DDA Board.

The intent is that no mill levy funds will be transferred to the City and the City's prior match will be utilized to fund employees and benefits, worker' compensation, and taxes. This amount will vary annually and is projected to range between \$220,000 and \$280,000. Exact funding will be discussed during upcoming DDA budget discussions.

Upon approval of this modification, the MOA will be presented to the Governing Body for final approval at their regular meeting on March 13, 2023 (later that evening).

Attachment:

Revised Memorandum of Agreement

MEMORANDUM OF AGREEMENT

This Agreement is by and between the Governing Body of the City of Cheyenne (“City”), a Wyoming municipality, whose legal address is 2101 O’Neil Avenue, Cheyenne, Wyoming 82001, and the Cheyenne Downtown Development Authority Board (“DDA Board”), currently located at 109 West 17th Street, Cheyenne, Wyoming 82001, and is entered into and becomes effective on the date of the last signature affixed hereto.

WITNESSETH:

WHEREAS, the Downtown Development Authority (“DDA”) was created pursuant to Wyo. Stat. § 15-9-201 *et. seq.* and City Ordinance #2804. The DDA Board exercises supervisory control over the DDA and has the authority to oversee the redevelopment the properties within the Downtown Development District.

WHEREAS, the Downtown Development District is currently comprised of a total of seventy-four (74) city blocks and is bounded by House Avenue on the east, Snyder Avenue on the west, 22nd Street on the north, and the Union Pacific Railroad tracks on the south, and also includes a small strip south of the Central Avenue viaduct that is bounded by Central Avenue on the east, Capitol Avenue on the west, Deming Drive on the south, and West 11th Street on the north.

WHEREAS, the City supports the continued redevelopment of the Downtown Development District and wishes to provide the DDA Board with professional and administrative assistance to further this development.

WHEREAS, the City and the DDA Board both wish to foster a harmonious working relationship by jointly planning the redevelopment activities in the Downtown Development District;

WHEREAS, this Agreement is intended to specify the roles and responsibilities of both parties; and,

WHEREAS, This Agreement will allow the staff of the City Planning Department to coordinate with outside agencies to administer the programs and goals established by the DDA Board.

NOW, THEREFORE, it is mutually agreed by both the City and the DDA Board that:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions agreed to by the parties regarding intention for the City of Cheyenne to provide professional and administrative services to the DDA Board for the administration of the DDA for redevelopment programs and efforts in the Downtown Development District.

2. Term. This Agreement is effective up to and until June 30, 2025, unless terminated by either party as set forth in section 5(1) below prior to that date.

3. Both Parties. Each Party shall:

a. Implement the mission and goals of the DDA Board as envisioned in Wyo. Stat. § 15-9-201 *et seq.* necessary to foster the redevelopment of the Downtown Development District.

b. Cooperatively take part in the formulation and delivery of the goals established by the DDA Board.

c. Contribute information, financial support, and other resources as may be necessary including assistance in obtaining other grants and support essential to carry out the tasks needed to carry out the work of the DDA Board.

d. Work together to support the vitality and success of the Downtown

Development District.

4. City of Cheyenne. The City of Cheyenne shall:

a. The City Planning and Development Department shall take over and assume all responsibilities previously executed by the DDA staff by providing professional and administrative services to the DDA Board in carrying out its goals.

b. The Director of the City of Cheyenne Planning and Development Department shall serve as the City's representative and primary contact for the DDA Board. The City Planning and Development Director with consultation from the DDA Board, may hire staff to assist in the implementation of the goals established by the DDA Board, but in no event shall the Planning Director, or his or her staff, be considered by the DDA Board as their Executive Director as referenced in Wyo. Stat. § 15-9-207(a),(b)(i).

c. The City Planning and Development Department shall perform all professional and administrative functions of the DDA Board as defined in Wyo. Stat. § 15-9-201 *et. seq.* and as outlined in the City Ordinance #2804 and the DDA Board's bylaws.

d. The City Planning and Development Department shall receive, manage, and account for all funds and revenue associated with the DDA Board including, but not limited to the following: mill levy taxes; DDA Board reserves; DDA Board self-generated revenue; and grant funding. The City Treasurer's Department will provide oversight for the management of these funds which will be subject to all rules and regulations previously applicable to the DDA Board including, but not limited to, City

access to all accounting records, books and archives.

e. Depending on the availability of funds, the City will provide staffing services, including payroll and benefits.

f. The City Planning and Development Department shall provide support and oversight to the DDA Board including compliance with the Wyoming Open Meetings Act, Wyo. Stat. § 16-4-401 *et. seq.*, and the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 *et. seq.*

g. Other City agencies and departments within the City of Cheyenne shall provide coordination to ensure that the overall efforts of the city are coordinated and contribute to the maximum extent possible for the betterment of the Downtown Development District.

5. DDA Board Responsibilities. The DDA Board shall:

a. Work with the City on creating and implementing a transition plan to bring the professional and administrative services provided by former DDA staff at the direction of the DDA Board into the City of Cheyenne.

b. Assist in accounting for all DDA Board financial records, archives, by-laws, etc. In conjunction with the Planning Department, develop, update and prepare for adoption a Plan of Development pursuant to Wyo. Stat. § 15-9-208.

c. Provide the City Planning and Development Director with guidance and direction so that the tasks needed to accomplish the work of the DDA Board can be carried out as efficiently and as effectively as possible.

d. Work with the City Planning and Development Director to identify and

prioritize the goals of the DDA Board and develop both short and long terms plans to implement those goals.

e At all times, respect the time and resources of the City Planning and Development Department so the City Planning and Development Department Director can efficiently and effectively manage the work needed to accomplish the goals of the DDA Board.

6. General Provisions.

a. Amendments. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

b. Assignment. No party may assign or transfer the responsibilities or agreements made herein without the prior written consent of the non-assigning parties, which approval shall not be unreasonably withheld.

c. Applicable Law. The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be in the First Judicial District, Laramie County, Wyoming.

d. Compliance with Laws. The parties shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

e. Indemnification. Each party to this Agreement assumes the risk of any liability arising from its own conduct. Each party agrees that it will be responsible for

any loss, claim, damages, or demands resulting from its negligence and the negligence of its employees and agents. Neither party agrees to insure, defend, or indemnify the other.

f. Nondiscrimination. The parties shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act, Wyo. Stat. § 27-9-105, *et seq.*, the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy, or qualifying disability in connection with the performance under this Agreement.

g. Governmental Immunity. The City does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable laws. Designation of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity.

h. Third-Party Beneficiary Rights. The parties do not intend to create in any other individual or entity, the status of third-party beneficiary and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly

agree that only parties' signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

i. Force Majeure. The performance of this Agreement by the parties shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this Agreement. This Agreement may be cancelled by any party, without liability, damages, fees, or penalty, and any unused deposits or accounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other parties.

j. Severability. If any provision of this Agreement is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

k. Notice. All notices arising out of or from the provisions of this Agreement shall be in writing and given to the parties either by regular mail or delivery in person.

l. Termination. Any party may terminate its participation in this Agreement by providing one hundred twenty (120) days written notice to other party, and allowing the other party that one hundred twenty (120) days to cure any default.

m. Prior Approval. This Agreement shall not be binding upon the parties, no services shall be performed under the terms of this Agreement, and no payments shall be made until this Agreement has been reduced to writing and approved by all necessary authorities.

n. Entirety of Contract. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

7. Signatures. In witness thereof, the parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Downtown Development Authority Board

By: _____
_____, Chairman, DDA Board

CITY OF CHEYENNE

BY:

Patrick Collins, Mayor

(SEAL)

ATTEST:

Kristina F. Jones, City Clerk