

## **AMENDMENT NO. 2**

### **TO AGREEMENT FOR CONTRACT SERVICES**

**THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES** (“Amendment No. 2”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and BRI CONSULTING GROUP, INC., a Texas corporation (“Consultant”) is effective as of the 29th day of February, 2024 (“Effective Date”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

### **RECITALS**

A. City and Consultant entered into that certain Agreement for Contractual Services dated December 31, 2021 (“Agreement”) whereby Consultant agreed to provide the City services for review and analysis of oil engineering reports for Marathon and Phillips 66 oil refineries and their impacts on oil tax audit reports previously prepared by Consultant for a total not-to-exceed contract amount of \$24,999 for a Term of 1 year; and

B. On May 9, 2022, City and Consultant entered into an amendment (“Amendment No. 1”) to expand the Scope of Services to include tax compliance reviews of Marathon, Phillips 66, Kinder Morgan, and Equilon for compliance with the Oil Industry Business License Tax as allowed by Carson Municipal Code Section 63516 (“Amendment No. 1 Services”), where such Amendment No. 1 Services were procured as a sole source procurement permitted under Section 2611(e) of City’s Municipal Code; and

C. In order for Consultant to perform the Amendment No. 1 Services, under Amendment No. 1 the Term of the Agreement was extended to February 29, 2024 and the Contract Sum increased by \$225,001 to a total not-to-exceed amount of \$250,000 to cover such expanded scope of work; and

D. When Consultant provided City the price estimate for the Amendment No. 1 Services, Consultant underestimated the amount of work that would be required to complete the services and as a result, Consultant incurred an additional \$52,946.95 beyond the budget approved by the City Council to fund Amendment No. 1; and

E. Now the Parties seek to enter into this Amendment No. 2 effective retroactive to the Effective Date to increase the Contract Sum by \$52,946.95 and to extend the Term by one month, to accommodate the additional time Consultant needed to complete the Amendment No. 1 Services. The Parties also desire to enter into Amendment No. 2 for the purpose of allowing Consultant to perform continued audit services for six taxpayers within the City filing tax returns during 2023 (“Amendment No. 2 Services”) for an additional \$250,000, thereby bringing the total adjusted Contract Sum to \$552,946.95, and further extending the Term by an additional year so that the Agreement will expire March 31, 2025.

F. Similar to the Amendment No. 1 Services, Amendment No. 2 Services will be procured as a sole source procurement permitted under Section 2611(e) of City’s Municipal Code

because the services are unique due to their quality and fitness for a particular use and availability only from one (1) source. The City's Purchasing Manager has approved such procurement.

## TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (new text is identified in ***bold italics***, deleted text in ~~strike-through~~).

**A. Section 2.1 (Contract Sum) of the Agreement is hereby amended to read in its entirety as follows:**

“2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference, but not exceeding the maximum contract amount of ***Five Two Hundred Fifty Two Fifty Thousand Nine Hundred Forty Six*** Dollars and ***Ninety Five Zero*** Cents (~~\$552,946.95~~***\$250,000.00***) (“Contract Sum”).”

**B. Section 3.4 (Term) of the Agreement is hereby amended to read in its entirety as follows:**

“3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding ***March 31***~~February 29, 2025~~***4***, except as otherwise provided in the Schedule of Performance (Exhibit “D”).”

**C. Exhibit A (Scope of Services) is hereby amended to include the Amendment No. 2 Services attached hereto as Exhibit A-2.**

**D. Section I. of Exhibit C (Schedule of Compensation) of the Agreement is hereby amended to read in its entirety as follows:**

“I. **A.** For the Services in Section I. of Exhibit A, Consultant shall establish a Task Budget for each Task identifying the subtasks, based on the time and rates of the personnel performing the subtasks, and itemizing all materials and equipment utilized and the costs thereof. If payment is to be made other than at completion of the services, then the phases of the performance and percentage of payment due shall also be shown in the Task Proposal.

**B.** Consultant shall perform the Services in Exhibit A-1 at the following rates:

	<b>SUB-BUDGET*</b>
Marathon	\$112,500
Phillips 66	\$67,500

Kinder Morgan	\$22,500
Equilon	\$22,500
Total	\$225,000

\*Sub-budgets are estimates based on the complexity of the Services in Exhibit A-1.

**C. Consultant shall perform the Services in Exhibit A-2 at the following rates:**

<i>Managing Director</i>	<i>\$285.00 per hour</i>
<i>Sr. Auditors</i>	<i>\$195.00 per hour</i>
<i>Staff Auditors</i>	<i>\$175.00 per hour</i>
<i>Administrative Support</i>	<i>\$75.00 per hour</i>
<i>Travel (Meals/Air/Hotel, Rental, etc.)</i>	<i>At cost</i>
<i>In town work (Mileage/Parking)</i>	<i>\$0.68 per mile/Actual</i>
<i>Shipping/Copying</i>	<i>At cost</i>

**E. Section IV. of Exhibit C (Schedule of Compensation) of the Agreement is hereby revised to read in its entirety as follows:**

“IV. The total compensation for the Services shall not exceed **\$552,946.95** \$250,000, as provided in Section 2.1 of the Agreement.”

**F. Section I. of Exhibit D (Schedule of Performance) of the Agreement is hereby amended to read in its entirety as follows:**

“I. **A.** Consultant shall perform the Services in Section I. of Exhibit A on an on-call basis as set forth in Exhibit A, *Exhibit A-1 and Exhibit A-2*.

**B.** Consultant shall complete the *Amendment No. 1* Services in Exhibit A-1 by *March 31* ~~February 29~~, 2024.

**C.** *Consultant shall complete the Amendment No. 2 Services in Exhibit A-2 by March 31, 2025.*

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2 and Amendment No. 1, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 2 and Amendment No. 1.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement and Amendment No. 1. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein and Amendment No. 1. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment No. 2, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment No. 2, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

5. **Authority.** The persons executing this Amendment No. 2 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which said party is bound.

6. **Counterparts.** This Amendment No. 2 may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Amendment No. 2.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 2 on the date(s) and year written below.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Lula Davis-Holmes, Mayor

Date: \_\_\_\_\_, 2024

**ATTEST:**

\_\_\_\_\_  
Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[rjl]

**CONSULTANT:**

BRI CONSULTING GROUP, INC., a Texas corporation

\_\_\_\_\_  
Name: Keith R. McCarthy  
Title: President

\_\_\_\_\_  
Name: Meredith A. McCarthy  
Title: Corporate Secretary

Date: \_\_\_\_\_, 2024

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	<div>TITLE(S) PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div>	<div>TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	<div>NUMBER OF PAGES</div>
<input type="checkbox"/>	OTHER _____	
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		<div>DATE OF DOCUMENT</div>
		<div>SIGNER(S) OTHER THAN NAMED ABOVE</div>

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<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		DATE OF DOCUMENT
_____ _____ _____		_____ _____ SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT “A-2”**  
**SCOPE OF SERVICES**

**I. Consultant will serve as the City’s auditor for the Oil Industry Business License Tax, as allowed by Carson Municipal Code Section 63516, by verifying the accuracy of the Gross Receipts tax returns filed in 2023 by six taxpayers (Phillips 66, Equilon, Kinder Morgan Tank Storage, Kinder Morgan (SFPP), Chemoil Terminals, Univar, Tesoro Logistics, Tesoro Refining) doing business in the City of Carson, California, to provide assurance to the City that Gross Receipt tax returns being filed during 2023 and future periods adhere to the terms of the tax legislation and that all Gross Receipts are being properly included and priced in the calculation of the tax.**

**Testing procedures will require the following information and include the following steps:**

- **Review legislation to determine volume and value criteria and definitions of relevant terms.**
- **Request excel files containing detailed refinery production volume data along with crude source information for the period under audit.**
- **Request a plant balance summary statement from each refinery.**
- **Request copies of statutory reporting statements.**
- **Request copies of purchase and sale agreements for each product to test pricing.**
- **Request product purchaser statements and review for any deductions not allowed under the tax code.**
- **Test sales volumes and pricing to verify the accuracy of the GR Tax calculation.**
- **Review receivable aging reports for the audit period to compare them with gross receipts reported.**
- **Review “Lockbox” payments received to test reported revenues vs payments received and then reconcile any differences.**
- **Check the mathematical accuracy of the Tax Returns filed for the periods.**

**II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**

- A. An estimated budget of the anticipated costs of conducting the review for approval prior to starting the fieldwork of the review. Budgets include estimated time for**



preparation, fieldwork and report writing along with any necessary out of pocket or travel costs.

- B. A written and electronic report outlining the results of the reviews and identifying any under or over payments will be provided at the conclusion of Consultant's work along with a complete set of work papers including full support for any exceptions noted, listing of information requests and tax payer's responses, along with other supporting documents and communications.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**

- A. Consultant will provide periodic status reports to the Contract Officer indicating the progress of the audits along with any exceptions that are identified during the review.
- B. Any anticipated delays in completing the review will be immediately communicated to the Contract Officer.

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

**V. Consultant will utilize the following personnel to accomplish the Amendment No. 2 Services:**

- A. Keith McCarthy, President
- B. Steve Wofford, Audit Manager
- C. Wally Trevino, Sr. Revenue Auditor
- D. Edward Miller, Audit Manager
- E. Jerry K. Du, CPA, Staff Auditor