

AMENDMENT NO. 1

TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and Carl Warren & Company, a California Corporation (“Consultant”) is effective as of the 4th day of January, 2022. City and Consultant may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services effective as of October 1, 2019 (“Agreement”), whereby Consultant agreed to act as the City’s Third Party Claims Administrator for administration of City self-insured general liability claims.

B. The Agreement envisioned annual rates ranging from \$57,288 for the first year up to \$65,739.36 for an option year 2 for all services for up to 125 claims opened by Consultant per contract year.

C. The Agreement provides: “Services for claims above the 125 limit will be processed at the following flat rates: Bodily Injury \$800 per claim; Property Damage: \$400 per claim. Notwithstanding the foregoing, the Parties acknowledge that the Contract Sum would need to be increased via amendment to this Agreement to authorize funding for the services relating to any claims above the 125 limit, and accordingly, Consultant shall notify the Contract Officer when the number of claims opened in any contract year reaches 100.”

D. For 2019 the City received 68 claims; for 2020 the City received 48 claims; and for 2021, up until October, the City received 27 claims.

E. In early October 2021, a foul odor began emanating from the Dominguez Channel, a waterway that cuts through the City. According to reports from the County of Los Angeles the offensive odor is hydrogen sulfide caused by a die-off of vegetation within the channel, which resulted in anaerobic decomposition, a process that led to the release of hydrogen sulfide gas (the “Dominguez Channel Odor Event”).

F. Even though the Dominguez Channel is not the City’s property, the City does not control the channel, maintain, or have jurisdiction over the channel, and there is no evidence the City caused the odor event, the City started receiving many claims related to the Dominguez Channel Odor Event.

G. The Agreement was not set up to account for an event that would result in hundreds of claims, and thus requires an amendment.

H. The City and Consultant intend to amend the Agreement to provide a discounted amount for handling each of the claims related to the Dominguez Channel Odor Event.

I. At this time, it is unknown how many claims the City may receive related to the Dominguez Channel Odor Event. Thus far the City has received approximately 1,600 claims. The City estimates that it may receive up to 2,500 claims.

J. City and Consultant hereby intend to amend the Agreement to provide that claims received during Contract Year 3 related to the Dominguez Channel Odor Event, up to a limit of 2,500, will be processed/administered by Consultant in accordance with the Agreement for a total limit of \$100,000, and that for each additional claim above 2,500 received related to the Dominguez Channel Odor Event, the rate will be \$50 per claim. This discount accounts for the redundancy of the claims which will be easier for the Consultant to process than a typical claim.

K. To effectuate the foregoing, the Schedule of Compensation provisions of the Agreement will need to be amended, and the not-to-exceed Contract Sum will need to be increased by \$100,000, from \$179,949.44 to \$279,949.44.

L. City and Consultant now desire to amend the Agreement to effectuate the foregoing amendments necessitated by the Dominguez Channel Odor Event.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (added text shown in ***bold italics***, deleted text shown in ~~strike through~~):

A. Section 2.1, "Contract Sum," is hereby amended to read in its entirety as follows:

"Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed the following amount: ***(1) Two Hundred Seventy-Nine Thousand Nine Hundred Forty-Nine Dollars and Forty-Four Cents (\$279,949.44) ~~One Hundred Seventy-Nine Thousand Nine Hundred Forty-Nine Dollars And Forty-Four Cents (\$179,949.44);~~ plus (2) Eighteen percent (18%) of the net recovery from subrogation claims as set forth in Section I of Exhibit "C"*** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8. In the event City exercises one or both of its options to extend the Term of this Agreement pursuant to Section 3.4, the Contract Sum shall be increased for such option period(s) by the amounts set forth in Section I of Exhibit "C."

B. Section I of Exhibit "C," Schedule of Compensation, is hereby amended to read in its entirety as follows:

"I. Consultant shall perform the Services at the following rates:

| | YEAR | ANNUAL RATE |
|----|--|-------------|
| A. | Contract Year 1 (10/1/19 – 9/30/20) | \$57,288 |
| B. | Contract Year 2 | \$59,293.08 |

| | | |
|----|---------------------|-------------|
| | (10/1/20 – 9/30/21) | |
| C. | Contract Year 3 | \$63,368.36 |
| | (10/1/21 – 9/30/22) | |
| D. | Option Year 1 | \$63,516.24 |
| | (10/1/22 – 9/30/23) | |
| E. | Option Year 2 | \$65,739.36 |
| | (10/1/23 – 9/30/24) | |

The foregoing annual rates apply for all Services for up to 125 claims opened by Consultant per contract year. Services for claims above the 125 limit will be processed at the following flat rates: Bodily Injury \$800 per claim; Property Damage: \$400 per claim. Notwithstanding the foregoing, the Parties acknowledge that the Contract Sum would need to be increased via amendment to this Agreement to authorize funding for the services relating to any claims above the 125 limit, and accordingly, Consultant shall notify the Contract Officer when the number of claims opened in any contract year reaches 100.

Notwithstanding the above, for Contract Year 3 (10/1/21 – 9/30/22), for all Services related to claims related to the Dominguez Channel Odor Event, as defined/described in the recitals to Amendment No. 1 to this Agreement, which are hereby incorporated into this Agreement as if fully set forth herein, the Consultant will perform such Services with respect to up to 2,500 of the Dominguez Channel Odor Event claims at a total flat rate/limit of \$100,000. As of the effective date of Amendment No. 1 to the Agreement, the City has received approximately 1,600 claims, and it expects to receive a total of 2,200, potentially 2,500. For additional Dominguez Channel Odor Event claims above 2,500, Consultant will perform the Services at a rate of \$50.00 per claim; however, the Parties acknowledge that the Contract Sum would need to be increased via amendment to this Agreement to authorize funding for the services relating to any additional claims.

In addition to the foregoing annual compensation, and as part of the Contract Sum, Consultant shall be entitled to eighteen percent (18%) of the net recovery from all subrogation claims pursuant to Section I of Exhibit “A” of this Agreement, with the City being entitled the remaining eighty-two percent (82%) of said recovery. There shall be no subrogation setup fee charged by Consultant.”

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

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. 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. 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, 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, 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.

5. **Authority.** The persons executing this Amendment 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 on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

6. **Counterparts.** This Amendment 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

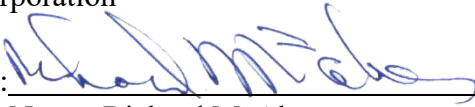
Joy Simarago, Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[npd, brj]


CONSULTANT:

CARL WARREN & COMPANY, a California Corporation

By: 

Name: Richard McAbee
Title: Chief Executive Officer

Date: December 28, 2021

By: 

Name: Sonia Ahuja
Title: Chief Operating Officer

Date: December 28th, 2021

Address: 11209 N. Tatum Blvd., Suite 130
Phoenix, AZ 85028

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 _____, 2022 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"/> | PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL | TITLE OR TYPE OF DOCUMENT _____ |
| <input type="checkbox"/> | ATTORNEY-IN-FACT | _____ |
| <input type="checkbox"/> | TRUSTEE(S) | NUMBER OF PAGES _____ |
| <input type="checkbox"/> | GUARDIAN/CONSERVATOR | _____ |
| <input type="checkbox"/> | OTHER _____ | DATE OF DOCUMENT _____ |
| SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____ _____ | | SIGNER(S) OTHER THAN NAMED ABOVE _____ |

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

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| CAPACITY CLAIMED BY SIGNER | | DESCRIPTION OF ATTACHED DOCUMENT |
|------------------------------------|---|--|
| <input type="checkbox"/> | INDIVIDUAL | |
| <input type="checkbox"/> | CORPORATE OFFICER | |
| | _____ TITLE(S) | _____ TITLE OR TYPE OF DOCUMENT |
| <input type="checkbox"/> | PARTNER(S) <input type="checkbox"/> LIMITED | |
| | <input type="checkbox"/> GENERAL | |
| <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: | | _____ DATE OF DOCUMENT |
| (NAME OF PERSON(S) OR ENTITY(IES)) | | |
| _____ | | |
| _____ | | |
| | | _____ SIGNER(S) OTHER THAN NAMED ABOVE |