

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 **WESTBERG + WHITE, INC.**, a California corporation (“Consultant”) is effective as of the ____ day of _____, 2019.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated April 2, 2019 (“Agreement”) whereby Consultant agreed to provide on-call professional architectural Services through June 30, 2021.

B. City and Consultant each desire both to reduce the amount of the not-to-exceed contract sum by half, as well as to require express City Council approval of any and all project-specific contracts (i.e., “Task Orders”) entered into under this Agreement for sums of \$25,000 or greater, so that no sums of money for specific Task Orders of \$25,000 or greater are spent under this on-call Agreement unless or until expressly approved by the City Council.

C. City and Consultant now desire to amend the Agreement both to reduce the not-to-exceed contract sum from \$500,000 to \$250,000; and, also to require express City Council approval of all Task Orders of \$25,000 or more which are issued from City to Consultant.

TERMS

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

1.1 **Section 2.1 of the Agreement, entitled “Contract Sum,” shall be amended to read 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 ~~Five Hundred Thousand Dollars (\$500,000)~~ ***Two Hundred Fifty Thousand Dollars (\$250,000)*** (the “Contract Sum”), unless additional compensation is approved by the City Council at the time of awarding this contract, any Council-approved subsequent increase, or pursuant to Section 1.8.”

1.2 **Section II, of Exhibit “A,” Scope of Services, shall be amended to read as follows:**

“When the City requests proposals from on-call engineers (including the Consultant) on a project-specific Task Order, and if the ~~City~~ ***Contract Officer tentatively*** accepts Consultant’s proposal, then the Task Order and Notice to Proceed shall provide in detail Consultant’s Scope of Services on that Task Order. This Agreement does not guarantee that Consultant will be

selected to perform services on Task Orders. This Agreement does not provide for Consultant's compensation except for Consultant's services rendered pursuant to a *valid* Notice to Proceed on a Task Order. ***For Task Orders under \$25,000, the Contract Officer may issue a valid Notice to Proceed. For Task Orders of \$25,000 or more, a Notice to Proceed is not valid until or unless expressly approved by the City Council.***

1.3 Section IV(C), of Exhibit "A," Scope of Services, shall be amended to read as follows:

"Contract Officer shall in writing approve, modify, or reject the Task Proposal, and may issue a Notice to Proceed. For Task Proposals under \$25,000, the Contract Officer may issue a valid Notice to Proceed. Upon agreement between Contract Officer and Consultant on a Task Proposal for a contract sum of \$25,000 or more, the City Council shall make the final determination on whether or not to issue a valid Notice to Proceed."

1.4 Section V of Exhibit "C," Schedule of Compensation, shall be amended to read as follows:

"This Schedule of Compensation governs Consultant's compensation in the event the Consultant performs services pursuant to a *valid* Notice to Proceed on a Task Order. This Agreement does not guarantee that Consultant will be selected to perform services on Task Orders. A Notice to Proceed on a specific Task Order for a contract sum of \$25,000 or more is not valid until or unless expressly approved by the City Council. A Notice to Proceed on a specific Task Order for less than a contract sum of \$25,000 is valid if expressly approved by the Contract Officer."

1.5 Section IX of Exhibit "C," Schedule of Compensation, shall be amended to read as follows:

"The total compensation for the Services shall not exceed \$500,000 \$250,000 for the term of this Agreement, as provided in Section 2.1 of this Agreement, and as amended in Exhibit "B.""

1.6 Section II of Exhibit "D," Schedule of Performance, shall be amended to read as follows:

"If the ~~City~~ Contract Officer tentatively selects the Consultant's proposal to perform a project-specific Task Order, the Task Order's Scope of Work/Services or the Notice to Proceed, or both, shall provide the detailed schedule of performance."

1.7 A new Section III is added to Exhibit "D," Schedule of Performance, as follows:

"Only upon receipt of express authorization from City Council shall Consultant proceed with performance of any project-specific Task Order for a contract sum of \$25,000 or more. Consultant may proceed with performance of any project-specific Task Order for a contract sum of less than \$25,000 upon written authorization from the Contract Officer."

2. Continuing Effect of Agreement. Except as amended by this Agreement, 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 Agreement 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 Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[cfn]

CONSULTANT:

WESTBERG + WHITE, INC., a California Corporation

By:_____
Name: Frisco White, AIA
Title: President

By:_____
Name: Paul Westberg
Title: Secretary
Address: 1775 Hancock St., Ste. 120
San Diego, CA 92110

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 _____, 2019 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	
<div style="text-align: center;">_____ TITLE(S)</div> <input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	<div style="text-align: center;">_____ TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	<div style="text-align: center;">_____ NUMBER OF PAGES</div>
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	<div style="text-align: center;">_____ DATE OF DOCUMENT</div>
	<div style="text-align: center;">_____ SIGNER(S) OTHER THAN NAMED ABOVE</div>

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<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