

AMENDMENT NO. 5

TO AGREEMENT FOR CONTRACT SERVICES FOR PROJECT MANAGEMENT SERVICES – DEVELOPMENT IMPACT FEE REPORT RECOMMENDATION

THIS FIFTH AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment”) by and between the **CITY OF CARSON**, a California municipal corporation (“City”) and **KELLY ASSOCIATES MANAGEMENT GROUP, LLC**, a California Limited Liability Company (“Consultant”) is effective as of the 1st day of March, 2019.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated November 1, 2016 (“Agreement”) whereby Consultant agreed to review the City’s General Plan, Zoning Code, Specific Plans, fiscal and environmental information and land-use data related to proposed development opportunities in order to prepare and submit a report suggesting the best course of action for the City’s adoption of development impact fees, until completion of the services, a term of 60 days from the execution of the agreement or a term not exceeding one year from November 1, 2016.

B. On July 18, 2017, the City Council approved the first amendment to the Agreement, extending the Agreement through October 18, 2017. The first amendment was necessary to study and formalize an Interim Development Impact Fee (IDIF). This was in addition to the Scope of Services delineated under the Agreement. Given the additional time and work required to study and develop an IDIF, Consultant required additional funding of \$10,000.00 to the original contract amount for a total sum of \$34,000.00. The Consultant requested the first amendment to complete the additional requested work and effectively fulfill its obligations under the Agreement for the remainder of the contract term.

C. Subsequent to approval of the first amendment, the parties identified that in order for the Consultant to complete the scope of work for the first amendment, the contract amount should have been increased by \$20,000.00 instead of \$10,000.00. On August 1, 2017, the City Council approved the second amendment to the Agreement to provide additional funding of \$10,000 to the amended contract amount for a total sum of \$44,000.00, to allow the Consultant to complete the additional requested work and effectively fulfill its obligations under the Agreement for the remainder of the contract term.

D. On November 7, 2017, the City Council approved the third amendment for additional updates to the IDIF, and for the Consultant to attend additional City Council study sessions, community meetings, City Council public meetings, and prepare a final draft report. Based on the anticipated additional time and work requested of the Consultant by the City, additional funding of \$20,000.00, for a total amended contract amount of \$64,000.00, was authorized, and the term of the contract was extended to June 30, 2018.

E. On July 3, 2018, the City Council approved the fourth amendment to extend the term of the agreement from June 30, 2018 to June 30, 2019, to allow time for traffic and noise verification studies to be completed by another consultant. The Consultant then reviewed the traffic and noise verification study and incorporated these studies into the final IDIF study.

EXHIBIT NO. 6

F. The Agreement's Scope of Services, as amended through the fourth amendment, provides a list of tasks to be performed by Consultant, with an estimate of the number of hours necessary to perform each task.

G. The number of hours necessary to perform the tasks, particularly with respect to Task 5, was under-estimated, resulting in a shortfall of \$9,406.25 in the contract sum, and as a result, the City has received and been unable to pay two invoices from Consultant totaling said amount.

H. City and Consultant now desire to amend the Agreement to: (1) extend the term of the Agreement by one year, from July 1, 2019 to June 30, 2020; and (2) increase the contract sum by \$11,000, from \$64,000 to \$75,000. The parties intend that, of the \$11,000 increase to the contract sum, \$9,406.25 shall be used to cover the above-referenced shortfall and thereby facilitate payment of the outstanding invoices for services already performed as of the date of this Amendment, and the remaining amount of up to \$1,593.75 shall be used for on-call services associated with the implementation of the IDIF, to be provided by Consultant over the extended term of this Agreement from July 1, 2019 through June 30, 2020.

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 shall be amended to read in its entirety as follows:

“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 ~~Sixty-four Thousand Dollars (\$64,000.00)~~ **Seventy-Five Thousand Dollars (\$75,000.00)** (“Contract Sum”)

B. Section 3.4 (Term) of the Agreement shall be amended to read in its entirety as follows:

“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 beyond ~~June 30, 2019~~ **June 30, 2020**, except as otherwise provided in the Schedule of Performance (Exhibit “D”).

C. Section I of Exhibit “A” (Scope of Services) of the Agreement shall be amended to read in its entirety as follows:

“I. Consultant will perform the following services:

A. Project Management Services – Development Impact Fee Report Recommendation.

B. On-call services to assist with the implementation of the City's Interim Development Impact Fee Program. Consultant shall perform all such on-call services in compliance with the following requirements:

(i) *Each task shall be indicated by a written request produced by the Contract Officer with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.*

(ii) *Consultant shall prepare a written description of the requested tasks including all components and subtasks; a statement of the costs to perform the task based on the hours and personnel required to perform the task ("Task Budget"); and, a schedule for completion of the task ("Task Completion Date"); which shall all collectively be referred to as the "Task Proposal".*

(iii) *Contract Officer shall in writing approve, modify or reject the Task Proposal, and may issue a Notice to Proceed.*

(iv) *The task shall be performed at a cost not to exceed the Task Budget.*

(v) *Consultant shall complete the task and deliver all deliverables to Contract Officer by the Task Completion Date."*

D. Section II of Exhibit "A" (Scope of Services) of the Agreement shall be amended to read in its entirety as follows:

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

TASK	TITLE	DESCRIPTION	EST. HOURS
Task 1*	Internal Data Collection / Analysis	Review the General Plan, Zoning Code, Specific Plans, fiscal and environmental information, and land-use data related to Analysis proposed development opportunities. Consultant will then prepare a "white paper" summary that discusses how this data relates to development impact fees.	30
Task 2*	External Survey	Conduct a case study analysis of comparison cities in terms of industry best practices (fees assessed, applicability, management, accounting, etc.)	20
Task 3	Summary Report	Prepare and submit a report reviewing industry best practices and outlining a suggested course of action for the City's adoption of	50

		development impact fees.	
Task 4	Summary Report	Prepare and submit a report reviewing industry best practices and outlining a suggested course of action for the City's adoption of an interim Development Impact Fee.	50
Task 5	Report update, Meetings	Prepare, update and submit a report reviewing industry best practices and outlining a suggested course of action for the City's adoption of an Interim Development Impact fee. Attend additional study sessions, public and community meetings.	85
Task 6	<i>On-Call Services: IDIF Implementation</i>	<i>Provide on-call services to assist with the implementation of the City's Interim Development Impact Fee Program, as set forth in Exhibit "A," Section I.B</i>	8
*While the Internal and External studies are two separate tasks, Consultant will conduct them concurrently.			

”

E. Section V of Exhibit “C” (Schedule of Compensation) of the Agreement shall be amended to read in its entirety as follows:

“The total compensation for the Services shall not exceed ~~\$64,000.00~~ **\$75,000.00** as provided in Section 2.1 of this Agreement. ***Of this amount, the total cost of on-call services authorized pursuant to Section I.B of Exhibit “A” shall not exceed \$1,593.75.***”

F. Section I of Exhibit “D” (Schedule of Compensation) of the Agreement shall be amended to read in its entirety as follows:

“I. Consultant shall perform all services timely in accordance with the following schedule set forth in Section II of this Exhibit “D.”:

~~The term of this engagement would be 60 days from the date of execution.”~~

G. Section II of Exhibit “D” (Schedule of Compensation) of the Agreement shall be amended to read in its entirety as follows:

“II. Consultant shall deliver the following tangible work products to the City by the following dates.

Tasks 1 and 2

It is proposed that Tasks 1 and 2 be conducted over a three-week period following the City's authorization to proceed.

Task 3

Task 3 will be allocated three-weeks after submittal of the Task I “white paper” and the receipt of any comments from the City.

Task 4

Task 4 will be conducted over a twelve-week period following the City’s authorization to proceed.

Task 5

Task 5 will be conducted over a twenty-week period following the City’s authorization to proceed.

During the course of the tasks enumerated above, Consultant may suggest, on a priority basis, interim development impact fees for potential projects in certain parts of the City.

Task 6

Task 6 will be performed on an “as-needed” basis, pursuant to request of the Contract Officer in accordance with Section I.B of Exhibit “A,” during the first full fiscal year of implementation of the Interim Development Impact Fee Program (July 1, 2019 to June 30, 2020).”

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 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 dates set forth below, with the express intent for this Agreement to be effective as of March 1, 2019.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

Date: _____, 2019

ATTEST:

Donesia L. Gause-Aldana, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

CONSULTANT:

KELLY ASSOCIATES MANAGEMENT GROUP,
LLC

By: _____

Name: William R. Kelly

Title: President / CEO

Date: _____, 2019

By: _____

Name: Christine E. Kelly

Title: Executive Vice President

Date: _____, 2019

Address: 1440 North Harbor Boulevard,
Suite 900
Fullerton, CA 92835

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="display: flex; align-items: center;"><div style="flex: 1;"><input type="checkbox"/> PARTNER(S)</div><div style="flex: 1; text-align: center;">TITLE(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div></div>	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____ NUMBER OF PAGES
<input type="checkbox"/> OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE

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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.

WITNESS my hand and official seal.

Signature: _____

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<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 _____