

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 MRS Environmental, Inc., a California corporation (“MRS Environmental” or “Consultant”), is effective as of the ___ day of _____, 2020 (except as otherwise provided with respect to specific provisions herein).

RECITALS

A. City and Marine Research Specialists, a California corporation (“Marine Research Specialists”) entered into that certain Agreement for Contractual Services dated October 18, 2016 (“Agreement”) whereby Marine Research Specialists agreed to provide on-call environmental consulting services for a three-year term and a contract sum not-to-exceed \$750,000 for all three years, \$250,000 annually, with City options to extend the term for up to two additional one-year periods.

B. Effective October 1, 2019, City and MRS Environmental entered into Amendment No. 1 to the Agreement to: (1) exercise the City’s first one-year option to extend the Term of the Agreement so that the Agreement expires on October 17, 2020; (2) increase the Contract Sum by \$250,000, for a not-to-exceed amount of \$1,000,000; and (3) clarify that Section III of Exhibit “C,” “Schedule of Compensation,” is not applicable to the Agreement because the 10 % retention requirement is not applicable to on-call services.

C. Marine Research Specialists desires and intends to assign all of its rights, interests, duties and obligations under the Agreement to MRS Environmental, and MRS Environmental sees fit to assume the same, effective July 1, 2017. To that end, Marine Research Specialists sent a signed letter to the City’s Community Development Director dated September 22, 2020, stating that the Agreement should be assigned to MRS Environmental effective July 1, 2017, and that such assignment includes all assumptions of rights/interests/duties under the Agreement. The letter further stated that with the assignment, there will be no change in the people assigned to perform the contract services since the beginning of the Agreement. The letter was signed by Dr. Douglas Coats, the corporate officer of Marine Research Specialists who had executed the Agreement on behalf of Marine Research Specialists (the “Letter”).

D. Section 4.5 of the Agreement provides, in pertinent part, that “neither this Agreement nor any interests herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without prior written approval of City.” Accordingly, the Letter itself does not effectuate an assignment or transfer of any interest in the Agreement, because prior City approval is required for any assignment or transfer of the Agreement or any interest therein. As such, the Agreement, absent an amendment providing retroactive authorization, does not permit an assignment or transfer from Marine Research Specialists to MRS Environmental that is effective as of July 1, 2017. However, the City is amenable to the requested assignment, as is MRS Environmental. Therefore, the City and MRS Environmental now see fit to enter into this Amendment No. 2 to

add an exception to Section 4.5 of the Agreement to authorize an assignment and assumption of Marine Research Specialists' rights, interests, duties and obligations under the Agreement to MRS Environmental, effective as of July 1, 2017, and Marine Research Specialists acknowledges and consents to same. Furthermore, and notwithstanding the effective date of the assignment and assumption, MRS Environmental sees fit to take sole and full responsibility for all potential liabilities that would otherwise accrue to Marine Research Specialists as the consultant under the Agreement, including but not limited to those arising from or related to the period of time and services rendered between the effective date of the Agreement and the effective date of the assignment and assumption.

E. The high volume of development projects in the City necessitates the continued use of Consultant's on-call environmental consulting services to ensure development projects comply with CEQA requirements.

F. Over the first four years of the term of the Agreement, the annual not-to-exceed \$250,000 component of the Contract Sum was generally a fair estimate of the annual compensation to be paid Consultant. However, due to the fluctuations in the cost to the City in any given year, the restrictions of the annual not-to-exceed \$250,000 amount create difficulties in administering the Agreement. Additionally, the City desires to exercise its second one-year option to extend the Term of the Agreement, and anticipates that the City's demand for Consultant's on-call environmental consulting services during the second one-year extension period may cause the compensation for said period to exceed \$250,000. The considerations necessitate an increase of \$350,000 to the Contract Sum in connection with the exercise of the City's second option to extend.

G. Accordingly, City and Consultant now desire to amend the Agreement a second time, to: (1) effectuate the assignment to, and assumption by, MRS Environmental, of the rights, interests, duties and obligations of Marine Research Specialists under the Agreement, with the express acknowledgement and consent of Marine Research Specialists, effective as of July 1, 2017; (2) exercise the City's second one-year option to extend the Term of the Agreement so that the Agreement expires on October 17, 2021; (3) increase the Contract Sum by \$350,000, for a not-to-exceed amount of \$1,350,000, to enable the City to continue to use Consultant's on-call environmental consulting services until October 18, 2021; and (4) eliminate the annual not-to-exceed amount of \$250,000.

TERMS

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

A. Section 2.1, "Contract Sum," is hereby amended 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 *One Million*

Three Hundred Fifty Thousand Dollars (\$1,350,000) ~~One Million Dollars (\$1,000,000)~~ for the entire Term, ~~and shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) annually~~ (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8.”

B. Section 3.4, “Term,” is hereby amended 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 exceeding *five (5)* ~~four (4)~~ years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”). ~~The City shall have the right but not the obligation, in its sole discretion, to extend the Term of this Agreement for one (1) additional one year extended term (an “Extended Term”).~~”

C. Section 4.5, “Prohibition Against Subcontracting or Assignment,” is hereby amended, effective July 1, 2017, to read in its entirety as follows:

“The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. *Notwithstanding the foregoing, and as a sole exception thereto, pursuant to the request, acknowledgment and consent of Marine Research Specialists, a California corporation (“Marine Research”), City approves of the transfer (i.e., assignment and assumption) of the rights, interests, duties, and obligations of Marine Research under this Agreement to “MRS Environmental, Inc., a California corporation” (“MRS”), and MRS agrees to assume the same, effective July 1, 2017 (the “Transfer Date”). In connection therewith, City and MRS agree that, commencing from and after the Transfer Date, MRS shall assume and be solely and fully responsible for all liabilities*

(known or unknown, suspected or unsuspected) of the consultant under this Agreement. Additionally, and notwithstanding the Transfer Date, MRS represents and warrants to City that it will and does assume and take sole and full responsibility for all liabilities (known or unknown, suspected or unsuspected) of the consultant under this Agreement arising from or related to the period of time and services performed between the date of effectiveness of this Agreement and the Transfer Date, even though such liabilities would or may otherwise be the responsibility of Marine Research. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.”

D. The Agreement is hereby amended to change the name of the Consultant such that the term “Consultant,” and all references to “Marine Research Specialists [a California corporation],” as used in the Agreement, shall be construed, commencing from and after July 1, 2017, to mean and refer to “MRS Environmental, Inc., a California corporation.”

E. Section VI of Exhibit C, “Schedule of Compensation,” is hereby amended as follows:

“The total compensation for the Services shall not exceed ~~\$250,000 annually, and will not exceed \$1,350,000~~ \$1,000,000 in total, as provided in Section 2.1 of this Agreement.”

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2, all provisions of the Agreement (as amended by Amendment No. 1) 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 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 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 Agreement, 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.

[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
[BRJ]

CONSULTANT:

MRS ENVIRONMENTAL, INC., a California corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

Address: 1306 Santa Barbara Street
Santa Barbara, CA 93101

ACKNOWLEDGED AND CONSENTED TO:

MARINE RESEARCH SPECIALISTS, a
California corporation

By: _____
Douglas Coats, Vice President & Secretary

Address: 4744 Telephone Rd., Suite 3-315
Ventura, CA 93003-5258

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 _____, 2020 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	_____
	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

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 _____, 2020 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.

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