

**AMENDMENT NO. TWO TO
PROFESSIONAL SERVICES AGREEMENT
WITH KEETON KREITZER DBA KEETON KREITZER CONSULTING
FOR ENVIRONMENTAL CONSULTING SERVICES FOR THE 1901
WESTCLIFF DRIVE MEDICAL OFFICE PROJECT**

C-4154
THIS AMENDMENT NO. TWO TO PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of the 24th day of November, 2012, by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and KEETON KREITZER, a sole proprietor doing business as ("DBA") KEETON KREITZER CONSULTING ("Consultant"), whose address is P.O. Box 3905, Tustin, CA 92781-3905, and is made with reference to the following:

RECITALS

- A. On April 20, 2010, City and Consultant entered into a Professional Services Agreement ("Agreement") for environmental consulting services for the 1901 Westcliff Drive medical office project ("Project").
- B. On July 19, 2011, City and Consultant entered Amendment No. One to the Agreement to extend the term, increase the scope of work and increase the total compensation ("Amendment No. One").
- C. City desires to enter into this Amendment No. Two to extend the term of the Agreement to June 28, 2013, update the insurance requirements and change the notification address of Consultant.
- D. City and Consultant mutually desire to amend this Agreement, as provided below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement shall be amended in its entirety and replaced with the following: The term of the Agreement shall commence on the Effective Date, and shall terminate on June 28, 2013, unless terminated earlier as set forth herein.

2. INSURANCE

Section 14 of the Agreement shall be amended in its entirety and replaced with the following: Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

3. NOTICES

Section 26 of the Agreement shall be amended as to the Consultant's address and shall read as follows: All notices, demands, requests or approvals from City to Consultant shall be addressed to

Attention: Keeton Kreitzer
Keeton Kreitzer Consulting
P. O. Box 3905
Tustin, CA 92781-3905
(714)665-8509
Fax (714)665-8539

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement, as amended shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 11/20/12

By: [Signature]
Aaron C. Harp mb 11-16
City Attorney

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: 12/03/2012

By: [Signature]
Dave Kiff
City Manager

ATTEST: 12.26.12
Date: _____

By: [Signature]
Leilani I. Brown
City Clerk

**CONSULTANT: KEETON KREITZER
DBA KEETON KREITZER CONSULTING,
a sole proprietorship**
Date: 12.20.12

By: [Signature]



[END OF SIGNATURES]

Attachments: Exhibit C – Insurance Requirements

EXHIBIT C

1. INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1.1 Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

1.3.1.1 Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

1.3.2 General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

1.3.4 Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed

in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

1.5.3 Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant

of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.5 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.6 City Remedies for Non Compliance If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

1.5.7 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

1.5.8 Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.