

C-5369

**PROFESSIONAL SERVICES AGREEMENT
WITH DAVID KILPATRICK FOR
OIL ASSET CONSULTATION**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 16th day of January, 2013 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and DAVID B. KILPATRICK, an individual ("Consultant"), at 35 Harbor Ridge Drive, Newport Beach, California, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant, as an independent contractor, to provide consultation regarding the City's oil assets ("Project").
- C. Consultant possesses the experience and knowledge to provide the professional services described in this Agreement.
- D. City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City.
- E. The consideration for this Agreement is the mutual benefit accruing to the parties in working together to understand and maximize the City's oil assets.
- F. The indemnification provisions contained in the attached Exhibit "A" hereto are intended to apply to all dealings between the City and the Consultant and are hereby incorporated into this agreement.

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

- 1. Term. The term of this Agreement shall commence on the Effective Date, and shall terminate on May 30, 2013. This Agreement may be terminated at any time, by either party, by giving written notice to the other.
- 2. Scope of Work. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Consultant shall perform the following services and City shall provide Consultant with access to all existing relevant information on file at City:
 - a) Provide strategic advice to City regarding available options to maximize the revenue received from the City's oil assets and the merits of any proposals received from oil companies;

- b) Assist in the preparation and development of a presentation ("Teaser") to be presented to oil firms interested in partnering with City. The Teaser will outline the City's oil reserves, benefits of the City's oil property and explain the potential opportunities of partnership/investment in the City's oil assets. Present the Teaser to prospective firms, including engaging in questions and answers. City shall become the owner of and retain exclusive right to use of the Teaser; and
- c) Provide other consultation to City as appropriate.

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: 1/24/13

By: Aaron C. Harp
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: 1/24/2013

By: Dave Kiff
Dave Kiff
City Manager

ATTEST:
Date: 1-25-13

By: Leilani I. Brown
Leilani I. Brown
City Clerk

CONSULTANT: DAVID B. KILPATRICK,
an individual
Date: Jan 16, 2013

By: David B. Kilpatrick
David B. Kilpatrick



[END OF SIGNATURES]

Exhibit A

In connection with the engagement of Consultant to advise and assist the City pursuant to the terms of this Agreement, the City hereby agrees to indemnify, defend and hold harmless Consultant to the full extent permitted by law from and against all losses, claims, damages, liabilities and expenses incurred by Consultant which (A) are related to or arise out of (i) actions taken or omitted to be taken (including any untrue statements made or any statements omitted to be made) by the City or (ii) actions taken or omitted to be taken by an indemnified person with the City's written consent or in conformity with the City's actions or omissions or (B) are otherwise related to or arise out of Consultant's activities on the City's behalf under Consultant's engagement, and the City will reimburse Consultant for all expenses (including fees and disbursements of counsel) as they are incurred by Consultant in connection with investigating, preparing or defending any such action or claim, whether or not in connection with pending or threatened litigation in which Consultant is a party. The City will not be responsible, however, for any losses, claims, damages, liabilities or expenses pursuant to clause (B) of the preceding sentence which are finally judicially determined to have resulted primarily from the bad faith or negligence of Consultant. The City also agrees that Consultant shall not have any liability to the City for or in connection with such engagement except for such liability or losses, claims, damages, liabilities or expenses incurred by City which resulted from Consultant's bad faith or negligence. City also agrees that it will not, without the prior written consent of Consultant, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not Consultant is an actual or potential party to such claim, action, suit or proceeding) unless such settlement, compromise, or consent includes an unconditional release of Consultant from all liability arising out of such claim, action, suit or proceeding. The foregoing agreement shall be in addition to any rights that Consultant may have at common law or otherwise, including, but not limited to, any right to contribution.

It is understood that, in connection with Consultant's above-mentioned engagement, Consultant may also be engaged to act for the City in one or more additional capacities, and that the terms of the original engagement or any such additional engagement may be embodied in one or more separate written agreements. This indemnification shall apply to the original engagement, any such additional engagement and any modification of the original engagement or such additional engagement and shall remain in full force and effect following the completion or termination of Consultant's engagement(s).