

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for reference purposes only, is entered into by and between the Centre City Development Corporation, a California non-profit public benefit corporation, with its principal place of business at 401 B Street, 4<sup>th</sup> Floor, San Diego, California 92101 (“the Corporation”) and Keyser Marston Associates, Inc., with its principal place of business at 500 South Grand Avenue, Suite 1480, Los Angeles, CA 90071 (“Consultant”). The Corporation and Consultant are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This Agreement is entered into in light of the following recited facts (each, a “Recital”).

### RECITALS

A. The Corporation is a non-profit public benefit corporation created by the City of San Diego (“City”) to provide redevelopment services to the Redevelopment Agency of the City of San Diego (“Agency”) and land use services to the City.

B. The Corporation is authorized to enter into contracts pursuant to the California Nonprofit Public Benefit Corporation Law (Corp. Code § 5110 *et seq.*), its Articles of Incorporation, its Bylaws and its Operating Agreement with the Agency.

C. The Corporation desires to retain the services of a professional economic/financial consultant firm to provide professional services relating to economic/financial consultant services necessary for a proposed Amendment to the Centre City Redevelopment Plan (“Plan”) for the Centre City Project Area (“Project Area”) to increase the tax increase limits (CAP) and as more specifically described in Exhibit A-Scope of Services (the “Professional Services”).

D. The professional services required by the Corporation for the Project are detailed within the Scope of Services set forth in Exhibit “A” to this Agreement (the “Professional Services”).

E. Consultant has represented to the Corporation that it has the expertise, experience, personnel, and the professional licenses, if professional licenses are required for the Professional Services, necessary to provide the Professional Services to the Corporation for the Project.

F. In light of these Recitals, the Corporation and Consultant desire to enter into this Agreement in which the Corporation will retain Consultant to provide, and Consultant shall provide, the Professional Services for the Project.

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties set forth their mutual covenants and understandings as follows:

### 1. SCOPE OF SERVICES:

Consultant shall perform the Professional Services set forth in the Scope of Services, attached to this Agreement as Exhibit "A" and incorporated into this Agreement by this reference. Consultant shall not be compensated for any services rendered that are outside the scope of services without a written amendment to this Agreement. The Scope of Services may only be changed, modified, or altered through an amendment to this Agreement. Any approved changes, modifications or alternations to the Scope of Services shall be performed in accordance with the provisions of this Agreement, subject to applicable amendments.

## **2. COMPENSATION:**

a. Payment for Professional Services. The Corporation shall pay for the Professional Services in accordance with the payment and fee schedule contained in Exhibit "B" attached to this Agreement and incorporated into this Agreement by this reference (the "Time and Materials Fee Schedule"). The maximum payment under this Agreement for the Professional Services and, if authorized, reimbursement of expenses, shall not exceed two hundred eighty-six thousand and two hundred dollars \$286,200.00 (the "Time and Materials Not to Exceed Amount"). Amounts designated for payment for specific tasks or Work Product in the Time and Materials Fee Schedule may be reallocated to another task or Work Product identified in the Time and Materials Fee Schedule with the advance written approval of the Corporation; however in no case shall any such reallocation result in an increase in the Time and Materials Not to Exceed Amount without written amendment of this Agreement.

b. Reimbursement of Expenses. Consultant shall be reimbursed for actual, reasonable and necessary expenses incurred in the performance of Professional Services in accordance with the expense reimbursement schedule and limitations included in Exhibit "C" attached to this Agreement and incorporated into this Agreement by this reference (the "Time and Materials Reimbursement Schedule"). Payment for reimbursable expenses incurred by the Consultant and its Subconsultant(s) is included in the Time and Materials Not to Exceed Amount. Consultant shall not mark-up reimbursable expenses, including expenses incurred by any Subconsultant. Unless this Agreement is amended, the Corporation shall not be responsible for reimbursement of expenses exceeding the applicable limitations set forth in the Time and Material Reimbursement Schedule. Consultant shall use its best efforts to schedule reimbursable expenses such as travel and lodging in advance in order to reduce costs, and the Corporation reserves the right to reject or reduce expenses resulting from Consultant's failure to use such best efforts.

c. Invoices. Consultant shall submit a monthly itemized statement that reflects the work completed and hours of Professional Services rendered by Consultant in accordance with this Agreement. The monthly statement shall reference this Agreement and shall contain detailed billing information including, but not limited to, an assigned task name and number, a description of the Professional Services rendered, Work Product completed, the date(s) of the Professional Services, time spent on tasks, name of person(s) performing the Professional Services, billing rates, total amount billed per each service and a cumulative total amount billed for each task name/number. Invoices shall also include a breakdown and substantiation (such as

receipts or other evidence of actual payments acceptable to the Corporation) of all reimbursable expenses by category of expense and amount. Invoices to the Corporation must be in accordance with the Scope of Services and the Time and Materials Fee Schedule and will be generally payable, if approved, within forty-five (45) calendar days of receipt of each monthly statement. Each invoice shall include a statement of the total contract value, amount billed to date under the contract, and the amount remaining under the contract.

d. Audit of Records. Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the Corporation or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment to Consultant. Consultant shall allow an authorized representative of the Corporation to inspect, examine, copy and audit such records during regular business hours upon reasonable advance notice.

### **3. EFFECTIVE DATE AND TERM:**

a. Effective Date. This Agreement shall not become effective until the first date on which all of the following are true (the "Effective Date"): (i) this Agreement is approved and signed by the authorized representative(s) of the Consultant and delivered to the Corporation; (ii) following all legally required notices and hearings, this Agreement is approved by the governing board of the Agency, the Corporation's governing board, and/or the authorized representative(s) of the Corporation, as applicable and legally required; and (iii) this Agreement is signed by the authorized representative(s) of the Corporation and delivered to Consultant.

b. Term. Except as provided below, the term of this Agreement (the "Term") shall continue, unless otherwise terminated early as provided in this Agreement, until the sooner of: (i) such time as the compensation remaining under the contract is expended or (ii) for a period of one year following the Effective Date. Consultant shall complete the Professional Services within the term of this Agreement, and shall meet any other schedules and deadlines mutually established, in writing, between the Parties. If the Term of this Agreement would otherwise expire while there is both remaining value under the Agreement and when all tasks within the Scope of Services have not been completed, then this Agreement shall remain in effect until the earlier of such time as there is no remaining value under this Agreement or all tasks within the Scope of Services have been completed. Except as expressly provided herein, the Term of this Agreement may not be extended or renewed for any additional time period unless by a written amendment to this Agreement.

### **4. STANDARD AND RULES OF PERFORMANCE:**

The Professional Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the state of California. Whenever the Scope of Services requires or permits approval by the Corporation, it is understood to be approval solely for the purposes of conforming to the requirements of the Scope of

Services and not acceptance of any professional or other responsibility for the Professional Services. Such approval does not relieve the Consultant of responsibility for complying with the applicable standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant or its Subconsultants. By performance of the Professional Services and delivery of any completed Work Product, Consultant represents that the Professional Services and the Work Product conform to the requirements of this Agreement and all applicable federal, state and local laws. If Consultant is retained to perform services requiring a license, certification, registration or other similar requirement under California or other applicable law, Consultant shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

## 5. INSURANCE:

a. Requirement. Prior to performing the Professional Services herein, throughout the duration of the Agreement, and for twelve (12) months following completion of this Agreement, the Consultant shall, at its sole cost and expense, procure and maintain the following types and limits of insurance, containing the additional insured endorsements and cancellation clause set forth herein. Additionally, Consultant shall require that each Subconsultant procure and maintain the types and limits of insurance required by this Agreement prior to performing any services hereunder. The types and limits of insurance are as follows:

(i) *Minimum Scope of Insurance*. Coverage shall be at least as broad as:

A. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01), or equivalent, (Including operations, products and completed operations, as applicable), with a limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be \$2,000,000.

B. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto), or equivalent, with a limit of not less than \$1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation insurance as required by the State of California.

D. Employers' Liability insurance with the following limits: \$1,000,000 each accident; \$1,000,000 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by disease.

E. Errors & Omissions Liability insurance appropriate to the Consultant's profession with a limit of not less than \$1,000,000 per occurrence. Architects' and engineers' coverage is to be endorsed to include contractual liability.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Corporation prior to the commencement of the Professional Services. At the Corporation's option, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Corporation, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Corporation guaranteeing payment of losses and related investigations, claim administration and defense expenses

c. Other Mandatory Insurance Provisions.

(i) The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

A. THE CORPORATION, THE CITY OF SAN DIEGO REDEVELOPMENT AGENCY, AND THE CITY OF SAN DIEGO (AND EACH OF THEIR RESPECTIVE OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS) ARE TO BE COVERED AS ADDITIONAL INSURED AS RESPECTS: LIABILITY ARISING OUT OF WORK OR OPERATIONS PERFORMED BY OR ON BEHALF OF THE CONSULTANT; OR AUTOMOBILES OWNED, LEASED, HIRED OR BORROWED BY THE CONSULTANT.

B. For any claims related to the Professional Services, the Consultant's insurance coverage shall be primary insurance as respects the Corporation, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Corporation, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(ii) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled by either Party, except after thirty (30) days prior written notice has been provided to the Corporation.

d. Acceptability of Insurers. All insurance required by express provision of this Agreement shall be carried only by California-admitted insurance carriers with a current A.M. Best rating of no less than A:V, unless otherwise acceptable to the Corporation.

e. Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Corporation, the City of San Diego Redevelopment Agency, and the City of San Diego for all work performed by the Consultant, its employees, agents and Subconsultants.

f. Verification of Coverage. Before commencing any Professional Services, Consultant shall furnish the Corporation with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind

coverage on its behalf. **ALL ENDORSEMENTS MUST BE RECEIVED AND APPROVED BY THE CORPORATION BEFORE WORK COMMENCES AND NO COMPENSATION SHALL BE DUE AND OWING FOR ANY WORK PERFORMED PRIOR TO THE RECEIPT AND APPROVAL OF THE ENDORSEMENTS.** However, failure by the Corporation to obtain the endorsements shall not operate as a waiver of these insurance requirements.

g. Subconsultant Insurance Requirements. Consultant shall require and verify that each Subconsultant maintains insurance meeting all requirements of this Agreement throughout the performance of any work relating to the Professional Services by such Subconsultant. Upon request of the Corporation, the Subconsultant shall provide proof to the Corporation that each Subconsultant has in place the insurance required by this Agreement.

## **6. INDEMNITY:**

a. To the fullest extent permitted by law, the Consultant shall indemnify, defend (with independent counsel approved by the Corporation) and hold harmless the Corporation, the Redevelopment Agency of the City of San Diego, and the City of San Diego and their directors, officers, employees and agents (collectively, "Indemnified Parties") from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type, expressly including but not limited to those arising from bodily injury or property damage, arising out of or resulting from any error or negligent or wrongful act or omission of the Consultant or Consultant's officers, employees, agents, or Subconsultants. The Consultant's obligations apply regardless of whether or not a liability is caused or contributed to by the negligence (including passive negligence) or other act or omission of an Indemnified Party. However, to the extent that liability is caused by the active negligence or willful misconduct of an Indemnified Party, the Consultant's indemnification obligation shall be reduced in proportion to the Indemnified Party's share of liability for its active negligence or willful misconduct, if any. The acceptance or approval of the Consultant's work or Work Product by the Corporation or any of its directors, officers or employees shall not relieve or reduce the Consultant's indemnification obligation. The provisions of this Section 6 survive completion of the Professional Services or the termination of this Agreement and are not limited by the provisions of Section 5 relating to insurance. The Consultant agrees to pay any and all fees and costs the Indemnified Parties incur to enforce Consultant's indemnification obligation under this Section 6.

b. Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services related to this Agreement, upon the Corporation's request, Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation. Corporation shall not be responsible for payment of Consultant's costs or expenses or compensation to Consultant relating to

Consultant's performance of its obligations under this subsection 6(b), except if the costs or expenses are covered by subsection 6(a) above.

## **7. SUBCONSULTANTS AND EMPLOYEES:**

a. Generally. Consultant shall not retain Subconsultants for any portion of the Professional Services authorized by this Agreement, except as expressly stated herein, without prior written approval of the Corporation. Subconsultant agreements, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. A copy of all contracts between Consultant and any Subconsultant(s) shall be kept on file with the Consultant and be made available to the Corporation for inspection upon request at any time during the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. The Consultant shall obtain the Corporation's approval before making any change in a contract between Consultant and any Subconsultant that materially reduces or increases the scope of the Subconsultant services. Consultant shall not charge an administrative fee or mark-up for the cost of the work, if any, performed by an approved Subconsultant. Consultant shall remain solely responsible for Subconsultant's performance of all obligations under this Agreement at all times during the term of the Agreement, including, but not limited to, the timely and satisfactory performance of the Professional Services.

b. Disputes between Consultant and Subconsultant. The Corporation shall not be made a party to any judicial or administrative proceeding in any dispute that arises between Consultant and any Subconsultant. Consultant agrees to defend and indemnify the Corporation as described in Section 6 of this Agreement in any dispute between Consultant and any Subconsultant.

c. Control and Payment of Subordinates and Subconsultants. The Scope of Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Professional Services subject to the requirements of this Agreement. Consultant shall pay all wages, salaries, and other amounts due or becoming due to Consultant's personnel, employees and Subconsultants in connection with their performance of any services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, employees, and Subconsultants, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

## **8. INDEPENDENT CONSULTANT:**

a. Consultant is an Independent Consultant. Neither Consultant nor any of Consultant's officers, employees, agents or Subconsultants, if any, is an employee of the Corporation by virtue of this Agreement or performance of any work under this Agreement.

## **9. SUCCESSORS OR ASSIGNS:**

a. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the Parties.

b. Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the Corporation.

## 10. CONFLICTS OF INTEREST:

a. Prohibited Interests. Consultant acknowledges that no official or employee of the Corporation who is authorized in such capacity on behalf of the Corporation to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this Agreement, may be directly or indirectly financially interested in this Agreement or in any part thereof. Consultant represents and warrants that it has made all required disclosures under the Corporation's policies and that it has not knowingly or negligently caused any official or employee of the Corporation to participate in this Agreement while having a direct or indirect financial interest in the Agreement. Consultant shall require each Subconsultant to make all required disclosures and shall further require that each Subconsultant include in its Subconsultant agreement an express representation and warranty in substantially the form provided in this paragraph.

b. Covenant against Contingent Fees. Consultant agrees that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this provision, the Corporation shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

c. Consultant and its Subconsultants are subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code section 1090 et seq. and section 81000 et seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code ("SDMC") at sections 27.3501 to 27.3595. If Consultant or a Subconsultant violates any conflict of interest law or any provision of this Section 10, the violation shall be grounds for immediate termination of this Agreement.

d. Consultant and its Subconsultants are subject to the Corporation's Conflict of Interest Policy and the Corporation's Policy for Economic Interest (Form 700) for Consultants. If, in performing the Professional Services set forth in this Agreement, Consultant or Subconsultant makes, or participates in, a "governmental decision" as described in title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the



same duties for the Corporation that would otherwise be performed by a Corporation employee holding a position specified in the Corporation's conflict of interest code, Consultant or Subconsultant shall be subject to all provisions of the Corporation's conflict of interest code requiring the completion of one or more statements of economic interests disclosing Consultant's relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk of the City of San Diego. Consultant or Subconsultant shall file a Form 700 (Assuming Office Statement) within thirty (30) calendar days of the Corporation's determination that Consultant must file a Form 700. Consultant or Subconsultant shall also file a Form 700 (Annual Statement) on or before April 1, of each year relevant to this Agreement, disclosing any financial interests held during the previous calendar year.

e. Ethics Requirements. If the Corporation requires Consultant or Subconsultant to file a statement of economic interests as a result of the Professional Services performed, pursuant to this Agreement, Consultant or Subconsultant shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, codified in the SDMC at sections 27.3501 to 27.3595, including the prohibition against lobbying the City for one year following the termination of this Agreement. Consultant or Subconsultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

f. Prohibition Against Gifts. Consultant and its Subconsultants are subject to the Corporation's Gift Policy, which prohibits officials and employees of the Corporation from receiving gifts. Consultant and its Subconsultants shall abide by the Corporation's Gift Policy and shall not knowingly or negligently make gifts to officials or employees of the Corporation.

g. Conflicting Work. During the Term, the Consultant and any approved Subconsultants shall not act as a Consultant or Subconsultant to any person or entity where that work would conflict with the Professional Services, without the prior written consent of the Corporation.

## **11. EQUAL EMPLOYMENT AND NONDISCRIMINATION:**

a. Compliance with the Equal Opportunity Contracting Program. Consultant shall comply with the City of San Diego's Equal Opportunity Contracting Program ("EOCP") Consultant Requirements. Compliance includes submittal of a signed Equal Opportunity Agreement. The EOCP requirements are set forth in SDMC sections 22.2701 through 22.2707. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Consultant shall provide equal opportunity in all employment practices. Consultant shall ensure that its Subconsultants comply with the City's EOCP requirements. Nothing in this Section shall be interpreted to hold Consultant liable for any discriminatory practice of its Subconsultants. Consultant shall, at the commencement of this Agreement and

annually thereafter, submit to the Corporation a current Work Force Report as required by the EOCP. It shall be the Consultant's sole responsibility to ensure an annual Work Force Report update is completed and submitted to the Corporation. Consultant shall be required to prepare a current Equal Employment Opportunity ("EEO") Plan, if so requested by the City of San Diego.

b. Non-Discrimination Ordinance. Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between Consultant and any Subconsultants, vendors and suppliers.

c. Compliance Investigations. Upon the Corporation's request, Consultant agrees to provide to the Corporation, within sixty (60) calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City of San Diego's Nondiscrimination in Contracting Ordinance (SDMC sections 22.3501-22.3517).

d. Title 24/Americans with Disabilities Act Requirements. Any Project plans and specifications prepared pursuant to this Agreement shall meet all current California Building Standards Code, California Code of Regulations, Title 24 ("Title 24") and Americans with Disabilities Act Accessibility Guidelines ("ADAAG") requirements, and shall be in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

e. American with Disabilities Act. Consultant agrees that it is aware of and will comply with San Diego City Council Policy 100-04, adopted by Resolution No. 282 153 relating to the federally mandated Americans with Disabilities Act (ADA). Consultant and Subconsultants will be individually responsible for their own ADA program.

## **12. OWNERSHIP OF WORK PRODUCT:**

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this Agreement (collectively, "Work Product") with the exception of Consultant's proprietary computer models, are the property of the Corporation. Consultant agrees that all copyrights which arise from creation of the Work Product pursuant to this Agreement shall be vested in the Corporation and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the Corporation. Corporation acknowledges that its use of the Work Product is limited to the purposes contemplated by the Scope of Services and that the Consultant makes no representation

of the suitability of the Work Product for use in or application to circumstances not contemplated by the Scope of Services.

### **13. TERMINATION, DELAY, AND SUSPENSION:**

a. Termination for Convenience. The Corporation may, at its sole option, terminate this Agreement for convenience at any time by providing Consultant with thirty (30) days written notice. Notice of termination shall be delivered by certified mail with return receipt.

b. Termination for Cause. Consultant's failure to perform or adequately perform any obligation required by this Agreement constitutes a Default entitling Corporation to terminate this Agreement upon ten (10) days' notice and opportunity to cure provided to Consultant. If the Default is such that it cannot reasonably be cured within ten (10) days, and Consultant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Consultant shall have such time as determined by the Corporation to be reasonably necessary to cure the Default before termination. The rights and remedies of the Corporation enumerated in this subsection 13(b) are cumulative and shall not limit the Corporations rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the Effective Date or enacted or established at a later date, that may be available to the Corporation. Provided that the Consultant is not in default or breach, Consultant may terminate this Agreement for breach of Corporation's payment obligations under this Agreement by providing the Corporation with thirty (30) days written notice of nonpayment, whereupon Corporation shall have at least thirty (30) days to cure the breach by providing payment of amounts due as determined by Corporation, or to dispute Consultant's claim that the Corporation breached its payment obligations under this Agreement, before termination is effective. Notice of termination shall be delivered by certified mail with return receipt.

c. Effect of Termination. Prior to the effective date of termination, Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of Consultant's Professional Services under this Agreement and shall deliver to the Corporation all maps, reports, letters, drawings, plans, calculations, specifications and other documents or records related to Consultant's Professional Services. Upon termination, Consultant shall be compensated only for those Professional Services which have been adequately rendered to the Corporation as of the effective date of termination, and Consultant shall be entitled to no further compensation. If this Agreement provides for payment of a lump sum for all services, the fee for services performed shall be the reasonable value, as determined by Corporation, of the portion of work completed in conformance with this Agreement as of the effective date of termination. By accepting payment for completion, filing and delivering documents as called for in this paragraph, Consultant discharges the Corporation of all of the Corporation's payment obligations and liabilities under this Agreement. The Corporation shall not be liable for any fees or costs that Consultant incurs as a result of termination or abandonment.

d. Extension of Time for Unforeseen Circumstances. In the event that the Consultant is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Consultant's reasonable control, such as war, riots, strikes, lockouts, work slow down or stoppage, except strikes, lockouts, or work slow down or stoppage of Consultant's employees or employees of Subconsultants, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Consultant shall inform the Corporation of the additional time required to perform the Professional Services and the Corporation may adjust the schedule.

e. Right to Suspend for Convenience. The Corporation may, at its sole option and without cause, suspend all or any portion of Consultant's performance of the Professional Services, for a reasonable period of time not to exceed six (6) months, or as otherwise agreed upon by the Parties. In accordance with the provisions of this Agreement, the Corporation will give written notice to Consultant of such suspension. If this Agreement is for a lump-sum amount, in the event of suspension, the Corporation shall pay to Consultant a sum equivalent to the reasonable value, as determined by the Corporation, of Professional Services that Consultant has satisfactorily performed under this Agreement up to the date of suspension. In order to receive such payment, the Consultant shall provide the Corporation with an invoice for Professional Services rendered through the date of suspension and the Corporation shall pay the invoice in accordance with Section 2 of this Agreement. After suspension, the Corporation may rescind such suspension by giving Consultant written notice to recommence services; provided, however, that Consultant shall be entitled to an extension of time equal to the length of the suspension to complete the Scope of Services, unless otherwise agreed to in writing by the Parties. If Corporation does not provide written notice to recommence services to Consultant within six (6) months of the effective date of suspension, or such longer period as agreed upon by the Parties, this Agreement shall terminate effective immediately.

#### **14. GENERAL PROVISIONS:**

a. Product/Service Endorsement. Consultant acknowledges and agrees to comply with the provisions of the City of San Diego's Administrative Regulation 95.65 concerning product or service endorsement. Any advertisement identifying or referring to the Corporation or the City of San Diego as the user of a product or service requires the prior written approval of the Corporation or the City of San Diego respectively. In connection with the Professional Services performed pursuant to this Agreement, Consultant shall not recommend or specify any product, supplier, or Consultant with whom Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

b. Confidentiality. All Professional Services performed by Consultant, including but not limited to all drafts, data, correspondence, proposals, maps, reports, and estimates compiled or composed by Consultant pursuant to this Agreement are for the sole use of the Corporation. Neither the documents nor their contents shall be released to any third party without the prior written consent of the Corporation. This provision does not apply to information that (i) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the Corporation, (ii) subsequently becomes publicly known through no act or omission by

Consultant, (iii) otherwise becomes known to Consultant other than through disclosure by the Corporation, or (iv) is required to satisfy a valid court order.

c. Drug Free Workplace. Consultant and Consultant's officers, employees, agents and Subconsultants shall comply with the City of San Diego's Drug-Free Workplace Policy, Council Policy No. 100-17. This policy requires that all City construction Consultants, consultants, grantees, and providers of non-professional services provide a drug-free workplace in accordance with the provisions contained therein.

d. Laws and Venue. This Agreement and disputes arising out of or relating to the Agreement or the Parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the Agreement or the Parties' relationship shall be brought in a state court situated in the County of San Diego, State of California.

e. Notices. Any notice or instrument required to be given or delivered by law or this Agreement shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to

To CCDC: Centre City Development Corporation  
401 B Street, 4th Floor  
San Diego, CA 92101

With Copy to: Shawn Hagerty, Esq.  
Best Best & Krieger LLP  
665 West Broadway, Suite 1500  
San Diego, CA 92101

To CONSULTANT: Keyser Marston Associates, Inc.  
Attn: Denise Bickerstaff  
500 South Grand Avenue  
Suite 1480  
Los Angeles, CA 90071

Either Party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

f. Integration and Modification. This Agreement represents the entire understanding of the Corporation and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified, amended, or altered except in writing signed by the Corporation and Consultant.

g. Exhibits. The Exhibits listed below are attached to and incorporated into this Agreement. To the extent there is a material conflict between the provisions of this Agreement and the provisions of the Exhibits, the provisions of this Agreement shall govern.

- |             |   |
|-------------|---|
| Exhibit "A" | Scope of Services                         |
| Exhibit "B" | Time and Materials Fee Schedule           |
| Exhibit "C" | Time and Materials Reimbursement Schedule |

h. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor or against either Party by reason of the extent to which each Party participated in the drafting of the contract.

i. Time. Time is of the essence in this Agreement. Any reference to days means calendar days unless otherwise specifically stated.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective representatives, thereunto duly authorized, as of the date first written above.

CENTRE CITY DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Frank J. Alessi,

Its: Executive Vice President and Chief Financial Officer

Dated this \_\_\_\_ day of \_\_\_\_\_ 2010.

APPROVED AS TO FORM:

KEYSER MARSTON ASSOCIATES, INC.

BEST BEST & KRIEGER LLP  
CENTRE CITY DEVELOPMENT  
CORPORATION CORPORATE  
COUNSEL

By: Denise V. Bickert  
Its: Principal

By: MM

Dated this 7 day of July 2010.

Dated this 8<sup>th</sup> day of JULY 2010.

**EXHIBIT A**

**Scope of Services  
Redevelopment Plan Amendment for the  
Centre City Redevelopment Project Area**

**Technical Studies**

Task 1: Physical Blight Analysis

The proposed Amendment requires that the Agency document significant remaining blight in the Project Area. 3DV will conduct a parcel-level survey to determine if there is significant remaining blight within the Project Area. 3DV anticipates documenting unsafe or unhealthy conditions for persons to live or work based upon a combination of serious building code violations (if data is available in electronic form) and field survey observations. Based upon our preliminary estimates, the proposed Survey Area includes approximately 5,826 parcels. 3DV and KMA will document factors that hinder the economically viable use or capacity of buildings or lots. This will include an analysis of how the existing building stock compares to contemporary standards and the impact of the building and site limitations on attracting reinvestment and depressed property values. Specific indicators may include, but are not limited to, small building size, small lot size and lack of adequate parking.

Using the appropriate GIS files, KMA will also download secondary data to expand upon and create maps depicting key blighting conditions. The CCDC will be responsible for providing resource referrals as requested, and will be responsible for facilitating the dissemination of requested and available City data to the Project Team.

Product:.....Physical Blight Analysis

Task 2: Economic Blight Analysis

The economic blight study will focus on documenting the economic indicators that demonstrate significant blighting conditions exist within the Project Area. The overall approach will be to show that portions of the Project Area are not experiencing the same economic growth and vitality as the areas that have been redeveloped, or other appropriate comparison areas such as competing market areas or the City as a whole. Specific analysis areas will include property sales and lease rates analyses, vacancy rates, as well as crime impacts to public safety and business viability.

Product:.....Economic Blight Analysis



### Task 3: Financial Feasibility Analysis

KMA will analyze the financial feasibility of amending the existing Redevelopment Plan. This will include documentation of anticipated expenditures and a projection of potential financing sources, including tax increment revenues, for implementation of a specific redevelopment program. The resulting cash flow projection will be prepared over the anticipated life of the Project Area to demonstrate project feasibility.

Anticipated expenditures may include estimated CCDDC-identified costs for capital improvement projects, redevelopment public participation efforts, land assembly, demolition, and administration of the Project Area. Expenditures to be projected may include assumed repayment of future year bonded indebtedness or repayment of any other financing mechanisms that may be incurred by the Project Area.

Projected funding sources will include the use of tax increment revenues projected to be generated from the Project Area. The tax increment revenue projection will incorporate future year valuation increases due to new development or property transfers of ownership, as well as limitations set forth under existing Redevelopment Law. The projected tax increment revenues will be subject to all limitations set forth under current Redevelopment Law, including set asides for Low and Moderate Income Housing and allocations to affected taxing entities.

Product:.....Financial Feasibility Analysis

### **Document Preparation**

#### Task 1: Taxing Agency, DOF and HCD Notices

The affected taxing agencies, the State Department of Finance (DOF) and Housing and Community Development (HCD) must be notified of the Agency's intent to amend the redevelopment plan. KMA will identify the name, contact and address of the taxing agencies for the Project Area. For staff's reference and use, KMA will also provide staff with hard and electronic copies of the list of taxing agencies and other noticees.

Product:.....Identification of Taxing Agencies and Addresses

#### Task 2 - Preliminary Report / Report Required by CRL Section 33451.5(c)

KMA will prepare one draft and one final version of the Preliminary Report. The Preliminary Report will summarize and incorporate the findings of the Technical Studies. This will include

describing the physical and economic blighting conditions; describing the projects and programs proposed to remove blight; and will include the financial feasibility analysis. The Report will also explain the reasons for amending the Redevelopment Plan; explain why the private sector acting alone or without redevelopment could not redevelop the area; and why the blighting conditions are a burden on the community. The Preliminary Report will include a map identifying the location and type of blighting conditions, the areas that are no longer blighted, and the necessary and essential parcels. The Report will also include:

- The proposed method of financing (the Financial Feasibility Analysis) including amounts projected to be deposited in to the Low and Moderate Income Housing Fund and amounts to be paid to the affected taxing agencies.
- An amendment to the Five-Year Implementation Plan.
- An explanation of why redevelopment cannot be accomplished by other government entities or the private sector acting alone.
- A new neighborhood impact report

Product:..... One Draft and One Final Version of the Preliminary Report

This report is intended to meet the requirements for the report to be sent to the DOF and HCD specified in CRL Section 33451.5(c) and the requirements for the Preliminary Report specified in CRL Section 33333.11(e).

### Task 3 - Report to the City Council

KMA will prepare one draft and one final version of the Report to the City Council. The Report to the City Council will be prepared in accordance with the requirements of CRL Sections 33333.11(h) and 33451.5, and will incorporate the evidence from which the City Council will make certain findings upon adoption of the Amendments. The Report to the City Council will also contain a summation of the process followed in the amendment adoption process as required in the CRL, and the information contained in the Preliminary Report in addition to the following:

- The report and recommendations of the Planning Commission;
- The California Environmental Quality Act (“CEQA”) document (negative declaration or other document prepared in order to comply with the CEQA);

- A summary of consultations with the affected taxing entities, including the agency's written response to any concerns raised in writing by any affected taxing entities, residents or community organizations; and
- A summary of consultations with residents and community organizations.

Product:..... One Draft and One Final Version of the Report to the City Council

### **Project Coordination Services and Meetings**

#### Task 1: Schedule Monitoring and Project Coordination

This task will include preparing an adoption schedule and coordinating with staff, the EIR consultant, civil engineer and legal counsel on upcoming actions. KMA will also update the full (detailed) schedule and the summary schedule as possible within the budget.

Product:..... Schedule of Actions and Ongoing Coordination with Staff

#### Task 2: Consultations with Taxing Agencies (Two Meetings)

KMA will attend with staff up to two meetings with the County (or other affected taxing agencies) to discuss issues of blight and financial feasibility.

Product:.....Attendance at Two Meetings with Affected Taxing Agencies

#### Task 3 - Community Outreach

KMA will assist in conducting two public information meetings. It is anticipated that staff will provide a brief introduction and then turn the meetings over to KMA. KMA will prepare a PowerPoint presentation that provides an overview of the purpose of the proposed Amendments and the Amendments adoption timeline. Community questions and comments will follow the presentation.

Product:..... Two Meetings

#### Task 4 - Meeting Attendance (Six Meetings)

KMA will attend six meetings in addition to the meetings noted above or make presentations to the Agency, City Council, CCDC Board and/or Planning Commission upon request. This could include additional meetings with the committees or community groups. KMA's approach is to work with City staff and tailor the presentation of information to work within the City's existing framework. If necessary, KMA is available to attend additional meetings on a time-and-materials basis.

Product:..... Attendance at Six Meetings

## EXHIBIT B

### TIME AND MATERIALS FEE SCHEDULE

Professional Services under shall be provided by Consultant for a term of three (3) years in accordance with the Agreement. The maximum payment under the Agreement, including authorized reimbursement of expenses, shall not exceed \$286,200 dollars.

Payment for Professional Services shall be in accordance with the following.

<b>Keyser Marston Assoc.</b>	
<u>Personnel Rates/Hour</u>	<u>Year 1</u>
A Jerry Keyser*	\$280.00
Managing Principals*	\$280.00
Senior Principals*	\$270.00
Principals*	\$250.00
Manager*	\$225.00
Senior Associate	\$187.50
Associate	\$167.50
Senior Analyst	\$150.00
Analyst	\$130.00
Technical Staff	\$95.00
Administrative Staff	\$80.00

\*Rates for individuals in these categories will be increased by 50% for time spent in court testimony.

<b>3D Visions</b>	
Principal, Creative Direction, Consulting, Planning	\$185
3D Models and 3D Animation, CAD, Video Production	\$185
Senior GIS, Computer Programming, Photography	\$185
Mid-level GIS, CAD, 3D, Cold Fusion Programming	\$140
2D Art, Web Design, Desktop Publishing	\$95
GIS Technician	\$85 - \$95
Field Surveyors, Clerical and Research Assistants	\$95 - 105
Data Entry, Interns, Drivers	\$85

## EXHIBIT C

### TIME AND MATERIALS REIMBURSEMENT SCHEDULE

1. Administrative, overhead, payroll and similar charges, secretarial time or secretarial overtime, word processing, photocopying, telephone charges, regular postage, computer use, in-house printing, insurance and other ordinary business expenses are included in the fees set forth in the Time and Material Fee Schedule and are not separately reimbursable expenses. *For certain professional services, reimbursement for word processing, copying and/or computer research may be permitted as specified in the Time and Materials Fee Schedule.*
2. Copying and report production expenses by outside copying or printing services, when necessary for the services are reimbursable at actual cost, if previously approved by the Corporation.
3. Federal Express and similar delivery services should be avoided without the prior approval of the Corporation. Charges for approved delivery services are reimbursable at actual cost, if previously approved by the Corporation. Other charges may be approved by the Corporation, in its discretion.
4. Lodging, travel costs, including transportation, and meals, will be reimbursed at actual cost, subject to the following restrictions, and supported by receipts acceptable to the Corporation:
  - (a) No meal, mileage reimbursement or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless travel at least 50 miles from Consultant's office is required for performance of the Scope of Services.
  - (b) Consultant shall use the most reasonable mode of transportation for any reimbursable travel, and must use its best efforts to plan its travel in advance to obtain reasonable fares. The maximum for air travel will be the actual cost of coach class travel only. The maximum for train travel will be the actual cost of business class travel only. Rental car use and rates must be authorized by Corporation in writing.
  - (c) Lodging expenses shall not to exceed to \$250 per day, inclusive of applicable taxes and fees, but excluding parking;

- (d) Meal expenses shall not exceed the following, per person, inclusive of applicable taxes and tip:

<u>Meal/ Expense</u>	<u>Reimbursement Rate</u>
Breakfast	\$15.00
Lunch	\$20.00
Dinner	\$30.00

- (e) The Corporation does not reimburse for cost of alcoholic beverages;
- (f) Travel time is not reimbursable or compensable;
- (g) Mileage reimbursement may not exceed the current IRS mileage rates. Gasoline and automobile repair expenses for the Consultant's own vehicle are not reimbursable expenses;
- (h) The maximum rate of reimbursement for parking fees is the actual cost of parking, not to exceed \$28.00 per day.
- (i) Consultant shall retain receipts pertaining to each trip for attachment to invoices for reimbursable costs, and shall furnish written details for each period of travel, including but not limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate documentation. Website and travel company booking confirmation do not constitute a receipt, but may, when combined with a receipt from the hotel or travel provider, be acceptable documentation.