



City of Carson Report to Successor Agency

April 3, 2012
New Business Consent

SUBJECT: CONSIDER AUTHORIZATION TO CONTRACT FOR CONSULTANT SERVICES WITH PSOMAS ENGINEERING TO PROVIDE SURVEYING/CIVIL ENGINEERING SERVICES ON AN AS-NEEDED BASIS

Submitted by Clifford W. Graves
Economic Development General Manager

Approved by David C. Biggs
City Manager

I. SUMMARY

The Carson Successor Agency (Agency) is being asked to enter into a contract for consultant services to continue to implement the goals of the Agency. The consultant and the contract amount are: Psomas - \$60,000.00 (Exhibit No. 1). The contract term will be for two years and the amount listed is a not-to-exceed amount.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE a two-year agreement for consultant services with Psomas for a not-to-exceed amount of \$60,000.00.
2. AUTHORIZE the Chairman to execute the consultant agreement with Psomas following approval as to form by the City Attorney.

III. ALTERNATIVES

1. MODIFY the consultant agreement as the Successor Agency Board may require.
2. TAKE whatever action the Successor Agency Board deems necessary.

IV. BACKGROUND

Agency staff is requesting authorization to execute a contract for surveying/engineering services with Psomas. Psomas provides quality service at competitive rates, and is very responsive to spur of the moment requests for services. The services of this consultant will be available to staff for a contract term of two years on an as needed basis. The new contract amount is for \$60,000.00. The amount is a not-to-exceed amount and may not be completely expended.

As mentioned, Psomas' on-call services primarily include surveying services and occasionally may include limited civil engineering services. Much of Psomas' work would include performing ALTA surveys for the Agency on very short notice in connection with a potential property sale, easement review or creation,

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record surveys, etc. They also routinely perform lot mergers and lot line adjustments when required prior to the Agency selling property.

The funds in the existing contract with Psomas will have been exhausted prior to completion of their work on a current project. Because that contract has another year before it expires, normally an amendment would be made to add funds to the contract amount. However, the existing contract is with the Carson Redevelopment Agency, which no longer exists. Thus, to continue the consultant's services, which will be necessary for both the Successor Agency and the Housing Authority, a new contract for each entity is required at this time with an appropriate amount of funds to cover the anticipated consultant services for each.

V. FISCAL IMPACT

Funds for the needed consulting services should be a legitimate charge as listed on the adopted Recognized Obligation Payment Schedule.

VI. EXHIBITS

1. Consultant Retainer Agreement by and Between the Carson Successor Agency and Psomas. (pgs. 3-12)

Document1

Prepared by: Jeff F. Westbrook

TO: Rev03-08-12

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development	Public Services

Action taken by Successor Agency

Date _____ Action _____

CONSULTANT RETAINER AGREEMENT

(Carson Successor Agency/
Psomas)

THIS CONSULTANT RETAINER AGREEMENT is made as of April 3, 2012 (this "Agreement"), by and between the Carson Successor Agency, a body corporate and politic ("Agency"), and Psomas, a California Corporation ("Consultant").

RECITALS

A. Agency has determined that it requires the certain professional services from a land survey/ civil engineering consultant to assist the Agency staff with certain services.

B. Agency desires to retain Consultant as an independent contractor to provide such services on an as needed basis.

C. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. Consultant's Services.

A. Scope and Level of Services. The nature, scope and level of the specific services to be performed by Consultant are as set forth in Exhibit A hereto and by this reference incorporated herein. Consultant shall provide such services on an as needed basis when given written instruction to do so by the Contract Administrator (as defined in Section 4 below).

B. Time of Performance. The services shall be performed in a timely, regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.

C. Standard of Care. As a material inducement to Agency to enter into this Agreement, Consultant hereby represents and warrants that it has the experience necessary to undertake the services to be provided herein.

D. Compliance with Law. All services rendered hereunder by Consultant shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.

2. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect until June 30, 2014 unless earlier terminated pursuant to Section 14.

EXHIBIT NO. - 1



3. **Compensation.** Agency agrees to compensate Consultant for its services according to the fee and payment schedule set forth in Exhibit A. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the Maximum Amount designated on Exhibit A hereto unless specifically approved in advance, in writing, by Agency.

4. **Representatives.**

A. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Lee Whiteley, who is a representative of Consultant and authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing Project Manager may not be changed by Consultant without the express written approval of Agency.

B. **Contract Administrator.** The Contract Administrator and Agency's representative shall be the person designated as Economic Development General Manager of the City of Carson (the "City") or the Executive Director of the Agency, or in his or her absence, an individual designated in writing by the Economic Development General Manager or Executive Director. If no Contract Administrator is so designated, the Economic Development General Manager of the City shall be the Contract Administrator. It shall be Consultant's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions which must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.

5. **Standard of Performance.** Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Consultant hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.

6. **Ownership of Work Product.** All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency.

7. **Status as Independent Contractor.** Consultant is, and shall at all times remain as to Agency, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner employees of Agency. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent



contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold Agency harmless from any failure of Consultant to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Agency from Consultant as a result of Consultant's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.

8. Confidentiality. Employees of Consultant, in the course of their duties, may have access to financial, accounting and statistical data provided by Agency. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by Agency. Agency shall grant such authorization if disclosure is required by law. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

9. Conflict of Interest. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid representation of any matter for another person or entity which would come before the City or the Agency during such time as he is engaged by the Agency pursuant to this Agreement. Consultant agrees not to accept any employment or representation during the term of this Agreement which is likely to make Consultant "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by Agency on any matter in connection with which Consultant has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude Consultant from accepting other engagements with Agency or the City of Carson.

10. Warranty and Representation of Non-Collusion. No official, officer, or employee of the City or Agency has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the City or Agency participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest" pursuant to California Government Code Sections 1091 and 1091.5. Consultant warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any Agency or City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any Agency or City official, officer, or employee, as a result



or consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant: Initials _____

11. Indemnification.

A. Consultant agrees to indemnify, hold harmless and defend Agency, the City of Carson ("City"), and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of City or Agency officials (collectively, "Indemnitees"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors or omissions of Consultant or any of its officers, employees, or agents.

B. Agency does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by Agency, or the deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Consultant agrees that Consultant's covenant under this section shall survive the termination of this Agreement.

12. Insurance.

A. Liability Insurance. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Consultant, his/her agents, representatives, employees or subcontractors.

B. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001)
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (4) Professional Liability Insurance.

C. Minimum Limits of Insurance. Consultant shall maintain limits no less than:



- (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) If applicable, Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- (4) Professional Liability Insurance: \$1,000,000 per claim and in the aggregate.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Agency. At the option of Agency's Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to Agency, its officers, officials, employees and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) Agency, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects liability arising out of: activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency, its officers, officials, employees, agent or volunteers.
- (2) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects Agency, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Agency, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Agency, its officers, officials, employees, agents or volunteers.



- (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to Agency.

F. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, unless waived by Agency's Risk Manager.

G. **Verification of Coverage.** Consultant shall furnish Agency with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bond coverage on its behalf. The endorsements are to be on forms provided by Agency. All endorsements are to be received and approved by Agency before work commences. As an alternative to Agency forms, Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

H. **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

13. Cooperation. In the event any claim or action is brought against Agency relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which Agency might require.

14. Termination.

A. Agency shall have the right to terminate the services of Consultant at any time for any reason on seven (7) calendar days written notice to Consultant. In the event this Agreement is terminated by Agency, Consultant shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Consultant shall have no other claim against Agency by reason of such termination, including any claim for compensation.

B. Consultant shall have the right to terminate this Agreement at any time for any reason on seven (7) calendar days written notice to Agency, and Consultant shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. Suspension. Agency may, in writing, order Consultant to suspend all or any part of Consultant's services under this Agreement for the convenience of Agency or for work stoppages beyond the control of Agency or Consultant. Subject to the provisions of this Agreement relating to termination, a suspension of the services does not void this Agreement.

16. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's



regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Agency:

Carson Successor Agency
1 Civic Plaza Dr., Ste. 500
Carson, CA 90745-2224
Attention: Clifford W. Graves
Economic Development General Manager
Fax: (310) 233-4804

Consultant:

Psomas
3 Hutton Center Dr. Ste. 200
Santa Ana, CA 92707
Attention: Lee Whiteley, Project Manager
Fax: (714) 545-8883

17. Nondiscrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Consultant will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

18. Assignability; Subcontractor. Consultant shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Consultant's obligations hereunder, without the prior written consent of Agency, and any attempt by Consultant to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

19. Compliance with Laws. Consultant shall comply with all applicable laws, ordinances, code and regulations of the federal, state, and local governments. Consultant shall obtain and maintain a valid City business license.

20. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

21. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or



sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

22. Corporate Agency. 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.

23. Non-Waiver of Terms, Rights and Remedies. Waiver by either party to this Agreement shall not be a waiver of any other condition of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Consultant constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

24. Attorney's Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.

25. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

26. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Agency and Consultant. This Agreement supercedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision of breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CARSON SUCCESSOR AGENCY

"Consultant"

PSOMAS, a California Corporation

By: _____
Chairman Jim Dear

By: _____
Its _____

"Agency"

By: _____
Its _____

ATTEST:

By: _____
Agency Secretary Donesia L. Gause

Approved as to form:

ALESHIRE & WYNDER, LLP

By: _____
Agency Attorney



EXHIBIT A

Scope and Level of Service: At the direction of the Program Administrator, Consultant shall provide engineering services for the Agency. Consultant's on-call services primarily include surveying services and occasionally may include limited civil engineering services. Much of Psomas' work includes performing ALTA surveys for the Agency in connection with a potential property purchase. They also routinely perform lot line adjustments when the Agency is selling or preparing to sell property.

Consultant shall provide written or oral reports to the Program Administrator on all assigned projects on a regular basis.

In connection with performance of this Agreement, the Consultant's Project Manager shall be Lee Whiteley.

The Agency's Contract Administrator shall be Clifford W. Graves, the Economic Development General Manager of the City of Carson.

Compensation: The Agency shall compensate Consultant on a per project basis pursuant to a written proposal for such project accepted to in writing by the Executive Director, Economic Development General Manager or other Authorized Officer (designated by the Executive Director or Economic Development General Manager) of the Agency.

Consultant shall present an invoice to Agency itemizing the duties performed and the amount of time relating to each task. Agency shall compensate Consultant only upon presentation of such itemized invoice. Consultant shall be responsible for all expenses incurred by Consultant in connection with this Agreement unless otherwise agreed to in the proposal.

Maximum Amount: \$60,000 as approved by the Board of Directors of the Agency on April 3, 2012.

