

**AMENDMENT NUMBER TWO  
TO PROFESSIONAL SERVICES AGREEMENT  
WITH LILLEY PLANNING GROUP**

This Amendment is made and entered into this 3<sup>rd</sup> day of September, 2014 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”) and LILLEY PLANNING GROUP, a California Corporation (“Consultant”).

WHEREAS, Consultant and City entered into an agreement on November 19, 2013, for Consultant to provide planning services (the “Agreement”); and

WHEREAS, Consultant and City entered into Amendment Number One on May 19, 2014, amending the original Agreement, to exercise the first extension of the Agreement term, ending May 19, 2015, and to include additional services and compensation; and

WHEREAS, Consultant and City desire to amend the Agreement to include additional services and compensation, and to modify the indemnification and hold harmless provision.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. In addition to the Scope of Services set forth in Section 1.1 of the Agreement, as amended by Amendment Number One, Consultant shall provide code enforcement supervisory activities as directed by the Development Services Director.

2. Section 2.1 of the Agreement is deleted in its entirety and replaced with the following:

2.1 Compensation. As compensation for the provision of services set forth in Section 2.1, Consultant shall be paid in accordance with the fee schedule set forth in Exhibit “B,” attached hereto and incorporated by reference. Consultant’s total compensation shall not exceed Four Hundred Eighty Thousand Dollars (\$480,000.00).

3. Exhibit “B” of the Agreement is replaced with the exhibit attached to this Amendment Number Two.

4. Section 6.9 of the Agreement is deleted in its entirety and replaced with the following:

6.9. Indemnification and Hold Harmless. Except as otherwise provided herein, Consultant agrees to defend, indemnify, and hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant’s sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense

obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. Consultant shall also not be liable for, and the City agrees to defend, indemnify, and hold free and harmless Consultant and/or Jerry Guarracino, at the City's sole expense, from and against any and all claims, actions, suits or other legal proceedings arising out of the performance by Jerry Guarracino of code enforcement activities relating to drug and alcohol recovery facilities pursuant to this Agreement. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

5. All terms not herein defined shall have the same meaning and use as set forth in the Agreement.

6. All other terms, conditions, and provisions of the Agreement not in conflict with this Amendment and previous amendments shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hand by their duly authorized representatives as of the day and year first above written.

CITY OF COSTA,  
a municipal corporation

\_\_\_\_\_  
City CEO

Date: \_\_\_\_\_

CONSULTANT

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title

ATTEST:

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**EXHIBIT B TO AGREEMENT**

## Lilley Planning Group

### Consulting Services

Contract Manager: Jennifer A. Lilley, President

The Lilley Planning Group will perform consulting services at the following hourly rates:

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|                            |                     |
|----------------------------|---------------------|
| Principal                  | \$110.00 - \$130.00 |
| Manager/Assistant Director | \$100.00 - \$120.00 |
| Senior Planner             | \$90.00 - \$105.00  |
| Associate Planner          | \$75.00 - \$90.00   |
| Assistant Planner          | \$55.00 - \$70.00   |
| Planning Technician        | \$40.00 - \$50.00   |
| Administrative Support     | \$45.00 – 55.00     |

Rates reflect all costs for the office overhead, if any, including direct and indirect costs. These fees reflect all anticipated fee increases during the contract duration.