



DATE: September 25, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **APPROVAL OF AMENDMENT 1 TO THE AGREEMENT WITH SEQUOIA FINANCIAL SERVICES, EXTENDING THE TERM OF THE AGREEMENT FOR ONE ADDITIONAL YEAR TO PROVIDE REVENUE COLLECTION SERVICES**

**SYNOPSIS**

Staff recommends that the City Council approve Amendment 1 to the professional services agreement with Sequoia Financial Services extending the term of the agreement for one additional year to September 2014 to provide revenue collection services for the Financial Services Department, and authorize the City Manager to execute the amendment.

**BACKGROUND**

In March 2010 staff issued an RFP for revenue collection services and in September 2010 City Council approved a three-year agreement with Sequoia Financial Services. The agreement includes collection services for outstanding utility bills, parking citations, ambulance bills and accounts receivable. The terms of the agreement allowed for two one-year extensions at the sole discretion of the City.

**ANALYSIS**

During the past three years of the contract, the company has been very responsive to the City staff requests. The company has successfully worked with the City's outsourced ambulance billing vendor to establish and maintain processes to transfer outstanding debts. It has incorporated small claim processing for the City securing judgments and/or settlement agreements. The percentage of revenue recovered has increased over the previous service provider.

**FISCAL IMPACT**

The Company receives a percentage of the amount collected. Thus, there are no costs to the City unless revenue is collected. The fiscal impact will be a function of the amount collected, thus not definitive. The commission rate is 19 percent for first placements and 29 percent for second placements, which are accounts that had been assigned to a

previous collection agency. Second placement accounts have a much lower probability of collection due to the fact that they have already been worked and the aging is much older. Therefore, there is a higher percentage retained upon collection.

In fiscal year 2012/13 the City received approximately \$198,000 from the collection agency's services. Based on historical information and commission rate, the City anticipates receiving approximately \$200,000 in fiscal year 2013/2014.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

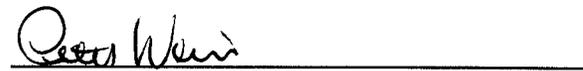
**RECOMMENDATION**

Staff recommends that the City Council approve Amendment 1 to the professional services agreement with Sequoia Financial Services extending the term of the agreement for one additional year to September 2014 to provide revenue collection services for the Financial Services Department, and authorize the City Manager to execute the amendment.

PREPARED BY:

  
\_\_\_\_\_  
Sheri Brown  
Financial Service Division Manager

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager  
Michael Blazenski, Interim Financial Services Director

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attachments:

- 1. Amendment 1
- 2. Original Professional Services Agreement

**CITY OF OCEANSIDE  
AMENDMENT 1 TO  
PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: COLLECTION AGENCY AGREEMENT**

THIS AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (hereinafter "Amendment"), dated September 25, 2013 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and SEQUOIA FINANCIAL SERVICES, hereinafter designated as "CONSULTANT."

**RECITALS**

WHEREAS, City and Consultant are the parties to that certain Professional Services Agreement dated September 22, 2010, hereinafter referred to as the "Agreement", wherein Consultant agreed to provide certain services to the City as set forth therein;

WHEREAS, the parties desire to amend the Agreement to provide for changes and/or modifications to the timing requirements.

**AMENDMENT**

NOW, THEREFORE, as set forth herein, the parties hereto do mutually agree that the Agreement shall be amended as follows:

1. Section 8 - Timing Requirements: Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. Pursuant to Section 8 of the Agreement, this Agreement shall be extended for a one-year period commencing on September 22, 2013 through September 24, 2014. This Agreement may be extended in the sole discretion of the CITY, in one-year time increments, not to exceed five (5) years from the date of the original Agreement.
2. Except as expressly set forth in this Amendment, the Agreement shall remain in full force and effect and is hereby ratified and reaffirmed.

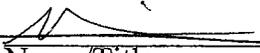
**COLLECTION AGENCY AGREEMENT**

**SIGNATURES.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF the parties hereto being duly authorized on behalf of their respective entities to execute this Amendment, do hereby agree to the covenants contained in the Agreement, including this Amendment and have caused this Amendment to be executed by setting hereunto their signatures on the dates set forth below.

SEQUOIA FINANCIAL SERVICES

CITY OF OCEANSIDE

By:   
Name/Title  
Roy du Plessis, CEO & President

By: \_\_\_\_\_  
Peter Weiss, City Manager

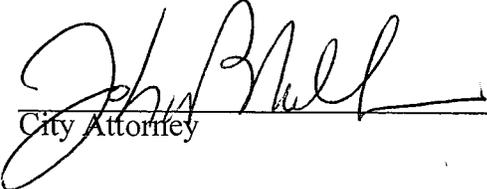
Date: 9-16-13

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

By:   
Name/Title  
Roy du Plessis, II, Corp. Sec

APPROVED AS TO FORM:

Date: 9-16-13

  
City Attorney

Employer ID No. \_\_\_\_\_

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

ACKNOWLEDGMENT

State of California  
County of Los Angeles)

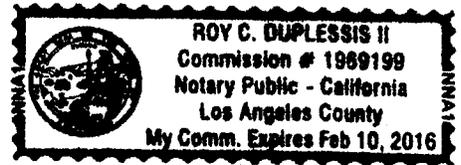
On September 16, 2013 before me, Roy C. DuPlessis II  
(insert name and title of the officer)

personally appeared Roy DuPlessis,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



**CITY OF OCEANSIDE****PROFESSIONAL SERVICES AGREEMENT****PROJECT: COLLECTION AGENCY AGREEMENT**

THIS AGREEMENT, dated September 22, 2010 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and SEQUOIA FINANCIAL SERVICES, hereinafter designated as "CONSULTANT."

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **SCOPE OF WORK.** The project is more particularly described as follows: CONSULTANT will provide revenue collection services for the City of Oceanside. The collection services will include outstanding debt for utility billing, ambulance billing, parking citations and general accounts receivable. These services will be provided in accordance with the specifications/scope of work and instructions as outlined in the request for proposal and CONSULTANT'S response and are attached hereto and incorporated herein as Exhibits 1 and 2 to the agreement.

The following items were negotiated upon notification that an agreement was being pursued with CONSULTANT. To the extent of a conflict between this Section 1 and Exhibits 1 and 2, this Section prevails.

- 1.1 Legal Proceedings are limited to Small Claims Actions.
- 1.2 CITY agrees to promptly respond to CONSULTANTS' requests for authorization on all accounts being recommended for litigation by CONSULTANT and to forward any additional documentation that may be requested in order to proceed with authorized legal proceedings.
- 1.3 In the event that CONSULTANT advances court costs for litigation and, thereafter, CITY requests that legal proceedings be terminated, CONSULTANT shall be reimbursed by CITY for the expended legal fees and court costs on said account. These fees and court costs are limited to service fees and any applicable filing fees only.
- 1.4 CITY agrees to, when necessary, furnish to CONSULTANT a witness for all trials, mediations, arbitrations and hearings as needed, in addition to providing any and all declarations and documents necessary for litigation.

## Collection Agency Agreement

- 1.5 CITY warrants that none of the claims assigned to CONSULTANT hereunder, have been assigned to other collection agencies, attorneys or other third party debt collectors, unless such prior assignments have been terminated and reassigned to CITY.
- 1.6 CONSULTANT agrees to file suit only upon receipt of written authorization from CITY for suit authorization.
- 1.7 CONSULTANT will advance all court costs and attorney fees in the event suit is filed. It is agreed by both parties that CONSULTANT will be allowed to withhold first monies received to offset court costs advanced by CONSULTANT.
- 1.8 CONSULTANT will remit payment, account activity reports, master account listings, and revenue collection reports to CITY on a monthly basis.
- 1.9 CONSULTANT shall have the right to endorse for deposit and collection all remittances received in the name of CITY on accounts assigned to CONSULTANT and to deduct from such remittance its authorized commission.
- 1.10 If at the time of CONSULTANT's monthly remittance CITY is indebted to CONSULTANT, CITY agrees to allow CONSULTANT to offset (deduct) said indebtedness from the amount of the remittance.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Financial Services Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.
3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

## Collection Agency Agreement

### 4. LIABILITY INSURANCE.

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2. CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
---------------------------------------	--------------

\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4. All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided

## Collection Agency Agreement

pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work

## Collection Agency Agreement

covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT agrees to defend, indemnify and hold CITY harmless of and from any and all claims, actions, causes of action, losses or damages based upon acts of omissions of CONSULTANT, its employees or agents (other than acts undertaken by CONSULTANT in good faith based specifically upon information provided by CITY to CONSULTANT).

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall be from amounts derived from the revenue collected. To the extent of a conflict between this Section 7 and CONSULTANT'S response to the CITY'S RFP (Exhibits 1 and 2) this Section prevails. CONSULTANT to receive the following percentages of revenue collected:

First placements - nineteen (19) percent of all revenue collected  
Legal on first placements - thirty (30) percent of all revenue collected  
Interest - fifty (50) percent of all revenue collected  
Second placements - twenty-nine (29) percent of all revenue collected  
Legal on second placements - thirty-four (34) percent of all revenue collected

No payment shall be paid to CONSULTANT in excess of the above percentages without prior written approval of the Financial Services Director. CONSULTANT shall obtain approval by the Financial Services Director prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be started in every detail to the satisfaction of the Financial Service Director by October 22, 2010. This agreement shall be in effect commencing on September 22, 2010 through September 20, 2013. This agreement may be extended in the sole discretion of the CITY, in one-year time

## Collection Agency Agreement

increments, not to exceed five (5) years. Any such extension shall be in a written amendment signed by both parties.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
10. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, or the CONSULTANT, then the CITY shall pay CONSULTANT for any work completed up to and including the date of the notice of termination of this agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination within thirty (30) days of the termination, except for those accounts in the process of collections as set forth below. Any work not deemed in the "process of collection" will be released by CONSULTANT and not subject to payment by the CITY. CONSULTANT is responsible to remit any revenue collected after the notice of termination to the CITY.

CONSULTANT will be paid pursuant to the contingency fee arrangement on accounts assigned and in the process of collection on the termination date. An account is in the "process of collection" when any of the following apply:

- a) At the time of termination, the debtor is making and continues to make payments in accordance with an agreed upon payment plan arranged by consultant.
  - b) The CONSULTANT has obtained a promise of payment and payment is received within ninety (90) days of the termination date.
  - c) Suit has been filed with the appropriate court on the account by the CONSULTANT and is pending or has been reduced to a Judgment.
11. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall

**Collection Agency Agreement**

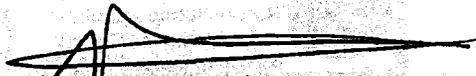
be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

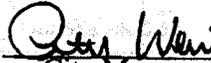
- 12. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
- 13. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

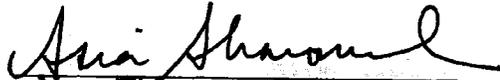
IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

SEQUOIA FINANCIAL SERVICE

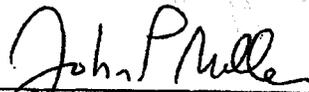
CITY OF OCEANSIDE

By:   
Name/Title  
Roy du Plessis, President/CEO

By:   
City Manager

By:   
Name/Title  
Asia Ahmouel, Corporate Secretary

APPROVED AS TO FORM:

  
City Attorney

95-4420801

Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

**ACKNOWLEDGMENT**

State of California  
County of Los Angeles )

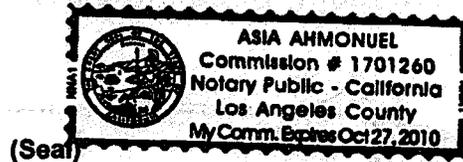
On 9/10/10 before me, Asia Ahmonuel, Notary Public  
(insert name and title of the officer)

personally appeared Roy du Plessis  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Asia Ahmonuel



Document:  
Collection Agency Agreement - City of Oceanside