

AMENDMENT NO. 1

TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and EVODC, LLC, a California limited liability company (“Consultant”) is effective as of the 6th day of August, 2024. City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated , 2024 (“Agreement”) whereby Consultant agreed to provide City industry standard colocation services including rack with dimensions to accommodate City equipment after installation and setup of colocation rack based upon City specifications, including two PDUs, Primary and Redundant AC or DC Electrical Circuits with appropriate amperage and voltage per City and OEM equipment requirements, for a not to exceed contract sum of \$207,628.28. The term of the Agreement is set to expire , 2029.

B. The City and Consultant now desire to amend the Agreement to amend the force majeure clause, indemnity provisions and limitation of liability provisions.

TERMS

1. Contract Changes. The Agreement is amended as provided herein (new text in *bold italics* and deleted text in ~~strikethrough~~).

A. Section 3.3 (Force Majeure) of the Agreement is hereby amended to read in its entirety as follows:

“3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within *thirty* ~~ten (30+0)~~ days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer *and Consultant* shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer *and Consultant* such delay is justified. ~~The Contract Officer’s determination shall be final and conclusive upon the parties to this Agreement.~~ In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant’s sole remedy being

extension of the Agreement pursuant to this Section. *If such event continues for more than ninety (90) days, either Party may terminate this Agreement.*”

B. Section 5.3 (Indemnification) of the Agreement is hereby amended to read in its entirety as follows:

“5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all *third-party* actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any *third-party* person, firm or entity arising out of or in connection with the *grossly* negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (“indemnitors”), or arising from Consultant’s or indemnitors’ reckless or willful misconduct, or arising from Consultant’s or indemnitors’ *grossly* negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such *third-party* claims or liabilities arising out of or in connection with the *grossly* negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the *grossly* negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such *third-party* action or proceeding, including but not limited to, legal costs and attorneys’ fees.

~~Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring *to the extent* as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence,~~

~~except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement."~~

C. Section 7.10 (Limitation of Liability and Disclaimer) is hereby amended to read in its entirety as follows:

"7.10 Limitation of Liability and Disclaimer.

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE TOTAL LIABILITY OF CONSULTANT OR CITY TOGETHER WITH ALL OF THEIR RESPECTIVE AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED ~~FIVE (5) TIMES THE CONTRACT SUM~~ **24 MONTHS OF THE MONTHLY RECURRING REVENUE OF THE CONTRACT. FOR AVOIDANCE OF DOUBT, THE CONSULTANT'S LIABILITY FOR INDEMNIFICATION IS LIMITED BY THIS PROVISION.** CITY'S SOLE REMEDY FOR FAILURE OR NON-PERFORMANCE OF THE SERVICE OR EQUIPMENT TO MEET THE PERFORMANCE OR SERVICE LEVELS WILL BE TO RECEIVE A CREDIT AS SET OUT IN APPLICABLE SCHEDULE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY SCHEDULE, OR ANY OTHER APPLICABLE TERMS, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF DATA, THE COST OF SUBSTITUTE SERVICES OR DIMINUTION IN GOODWILL, OF THE OTHER PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONSULTANT PROVIDES NO WARRANTIES OR REPRESENTATIONS RESPECTING THE SERVICE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. "AFFILIATE" SHALL MEAN ANY BUSINESS ENTITY THAT IS DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH A PARTY."

2. Continuing Effect of Agreement. Except as amended by this Amendment, all provisions of the Agreement, shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment.

3. Affirmation of Agreement; Warranty Re Absence of Defaults. City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement. Each party represents and warrants to the other that the Agreement, as amended by this Amendment, is currently an effective, valid, and binding obligation.

EXHIBIT NO. 1

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. Authority. The persons executing this Amendment 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 Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

6. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Amendment.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

CONSULTANT:

EVODC, LLC, a California limited liability company

By:_____

Name:

Title:

By:_____

Name:

Title:

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT’S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	_____
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))	DATE OF DOCUMENT
_____	_____
_____	_____
	SIGNER(S) OTHER THAN NAMED ABOVE

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

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Signature: _____

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_____	_____
TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	
<input type="checkbox"/> GENERAL	
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	NUMBER OF PAGES
<input type="checkbox"/> OTHER _____	
_____	_____
SIGNER IS REPRESENTING:	DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))	

_____	_____
	SIGNER(S) OTHER THAN NAMED ABOVE