

AMENDMENT NO. 4

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 IWORQ SYSTEMS, INC., a Utah corporation ("Consultant") is effective as of the 31st day of January, 2022.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated January 15, 2017 ("Agreement") with a contract period of one year and a not to exceed amount of \$21,000, whereby Consultant agreed to install and provide Public Works Applications/Software Services in the form of software modules; and

B. On July 17, 2018, City and Consultant amended the Agreement for the first time ("Amendment No. 1") in order to extend the term of the Agreement so that it expired on February 1, 2019, and to increase the contract sum of the Agreement from \$21,000 to \$48,400 to reflect the costs of the additional term of the Agreement and the additional services described in Exhibit "A" of Amendment No. 1; and

C. On January 31, 2019, City and Consultant amended the Agreement for the second time ("Amendment No. 2") in order to extend the term of the Agreement by an additional three years so that it expires on February 1, 2022, and to increase the contract sum of the Agreement by \$19,920 for a total not to exceed amount of \$68,320 to reflect the costs of the extended term of the Agreement; and

D. While Amendment No. 2 extended the Agreement term by an additional three years, the increased contract sum of \$68,320 reflected therein only supported additional costs to the City covering a period of one year, rather than three years; and

E. On May 19, 2020 City and Consultant amended the Agreement for the third time ("Amendment No. 3") in order to increase the contract sum of the Agreement by \$39,840 to cover the costs for the two year period for which funding was not requested in Amendment No. 2, bringing the increased contract sum to \$108,160; and

F. City and Consultant now desire to amend the Agreement for the fourth time ("Amendment No. 4") retroactive to January 31, 2022 in order to (1) extend the term of the Agreement by three years so that it expires on February 1, 2025, (2) reduce the scope of Public Works Applications/Software Services to only the Fleet Management Module, Citizen Engagement with Mobile App, Public Works Package, and (3) increase the contract sum by \$94,500 to cover the additional three years for a total not-to-exceed contract sum of \$202,660.00; and

G. Section 2611(i) of the City's Municipal Code provides that software license renewals shall not require compliance with the bidding provisions of the City's Purchasing Ordinance, thereby providing the necessary authority for the City to extend the term of the Agreement as contemplated in this Amendment No. 4; and

H. The City and Consultant hereby ratify and affirm the continuous and uninterrupted term of the Agreement from the effective date of the Agreement until and through February 1, 2025.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (added text shown in ***bold italics***, deleted text shown in ~~strikethrough~~):

A. Section 2.1, “Contract Sum,” is hereby amended to read in its entirety as follows:

“Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference, but not exceeding the maximum contract amount of ***Two Hundred Two Thousand Six Hundred Sixty Dollars One Hundred Eight Thousand One Hundred Sixty Dollars (\$202,660.00)*** ~~108,160.00~~ (“Contract Sum”).”

B. Section 3.4, “Term,” is hereby amended to read in its entirety as follows:

“Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services or until February 1, ~~2022~~ ***2025***, whichever occurs first, except as otherwise provided in the Schedule of Performance (Exhibit D).”

C. Section 5.3, “Indemnification,” is hereby amended to read in its entirety as follows:

“***General and Intellectual Property 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 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 person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, 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’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, except claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement. ***Consultant represents and warrants that it owns or is otherwise authorized to allow use of all intellectual property rights to the Products, as defined in the Scope of Services, and all associated trademarks, and agrees to defend, indemnify, and hold harmless the City and pay all damages***

(including reasonable attorneys' fees) relating to any third party claim, demand, cause of action, or proceedings (whether threatened, asserted, or filed) ("Claims") against City to the extent that such Claims are based upon Consultant's Products (excluding third party products) directly infringing a United States patent, registered United States copyright, or registered United States trademark, provided that the Products are used in compliance with this Agreement and further provided that such defense and indemnity obligations shall not exceed the Contract Sum of \$202,660. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement."

D. Section 6.4, "Ownership of Documents," is hereby amended to read in its entirety as follows:

*"Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City. **Upon expiration or sooner termination, Consultant will provide City with an electronic copy of all of City's data and any related documentation within 30 business days, if requested by the City at no cost to the City. During the period in which the Agreement is in effect, City may request a copy of all of City's data for a cost of no more than \$2,500.***

City acknowledges that they are receiving only a limited subscription to use the application(s), service(s), and related documentation, if any, and shall obtain no titles, ownership nor any rights in or to the application(s), service(s), and related documentation, all of which title and rights shall remain with Consultant. City shall not permit any user to reproduce, copy, or reverse engineer any of the application(s), service(s) and related documentation except as provided by law."

E. Section 7.4, "Termination Prior to Expiration of Term," is hereby amended to read in its entirety as follows:

*"Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. **If City terminates this Contract pursuant to this Section, Consultant shall be entitled to the balance of the Contract Sum remaining for the Term.** In addition,*

the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

F. Exhibit "A" of the Agreement is hereby amended to include Exhibit "A" of this Amendment No. 4.

G. Exhibit "C" of the Agreement is hereby amended to include Exhibit "C" of this Amendment No. 4.

H. Exhibit "D" of the Agreement is hereby amended to include Exhibit "D" of this Amendment No. 4.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No.4, all provisions of the Agreement, Amendments Nos. 1, 2, and 3 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 4, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No.4, and Amendments Nos. 1, 2, and 3 to the Agreement.

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 other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment No. 4, 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 No. 4, 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 No. 4.

5. **Authority.** The persons executing this Amendment No. 4 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 No. 4 on behalf of said party, (iii) by so executing this Amendment No. 4, such party is formally bound to the provisions of this Amendment No. 4, and (iv) the entering into this Amendment No.4 does not violate any provision of any other agreement to which said party is bound.

6. **Counterparts.** This Amendment No. 4 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 No. 4.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 on the date(s) set forth below, with express intent that this Amendment No. 4 shall be effective as of January 31, 2022.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

Date: _____, 2022

ATTEST:


Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP


Sunny K. Soltani, City Attorney
[ndp]

CONSULTANT:

IWORQ SYSTEMS, INC., a Utah corporation

By: 

Name: Garyn Perrett
Title: CEO

By: 

Name: Jared Helbert
Title: secretary
Address: 1125 W. 400 N., Suite 102
Logan, UT 84321

Date: _____, 2022

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 _____, 2022 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.

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

SCOPE OF SERVICES

FOR THE FEBRUARY 1, 2022 THROUGH FEBRUARY 1, 2025 TERM

I. Consultant will provide the following Services (all Services that qualify as modules or otherwise require use of intellectual property by City as granted by Consultant herein are "Products"):

A. Consultant shall prepare and provide the City with a "Citizen Engagement with Mobile App" which shall

1. Be robust and available for Android and iOS
2. Be available on any computer, tablet or mobile device using Chrome Browser
3. Include a web form/link for city website
4. Include configurable fields for simple data entry
5. Include citizen account creation and request tracking
6. Drive citizen satisfaction, streamline communication between citizens and city/county leadership, and reduce overhead costs with a self-service public portal
7. Include tools for tracking internal and external requests
8. Include robust reporting capabilities
9. Be able to upload images and pdf files
10. Track request location with X, Y coordinates

B. Consultant shall prepare and provide the City with a "Fleet Management Module" which shall

1. Be available on any computer, table, or mobile device using Chrome browser
2. Include fuel log tracking and uploads
3. Track work orders for employee cost, inventory, and purchase orders
4. Track maintenance schedules
5. Include Inventory management



6. Include a user-friendly dashboard
- C. Consultant shall prepare and provide the City with a “Public Works Package” which shall
1. Include the following modules:
 - a) Work Management Module
 - b) Sign Management Module
 - c) Pavement Management Module
 2. Be available on any computer, tablet, or mobile device using the Chrome browser
 3. Track and manage work by location using OpenStreetMap
 4. Include work orders scheduling and templates
 5. Track inventory, parts, material
 6. Include Sign Management with OpenStreetMap
 7. Include Pavement Management with OpenStreetMap
 8. Include Quarterly GIS Updates
- D. Software as a Service (Saas) Terms of Access:

Retroactive to the effective date of the Agreement, Consultant acknowledges that it has granted City a non-exclusive, non-transferable limited access and license to use Consultant’s service(s), application(s) on Consultant’s authorized website.

Consultant is not responsible for the content entered into Consultant’s database or uploaded as a document or image. Access to iWorQ cannot be used to record personal or confidential information such as driver license numbers, social security numbers, financial data, credit card information or upload any images or documents considered personal or confidential to the extent recording such information is not a required component of the Services.

E. Training and Implementation:

City agrees to provide the time, resources, and personnel to implement Consultant’s service(s) and application(s). Consultant will assign a senior account manager and an account management team to implement service(s) and application(s). Typical implementation will take less than 60 days. Consultant account managers will call

twice per week, provide remote training once per week, and send weekly summary emails to the customer implementation team. Consultant can provide project management and implementation document upon request. Consultant will do ONE import of the City's data. This import consists of importing data, sent by the City, in an electronic relational database format. City must have clear ownership of all forms, letters, inspections, checklists, and data sent to Consultant. Data upload and storage is provided to City. This includes uploading files up to 3MB and 10 GB of managed data storage on AWS GovCloud.

E. Customer Support:

Customer support and training are FREE and available Monday-Friday, from 6:00 A.M. to 5:00 P.M. MST, for any authorized user with a login. Consultant provides unlimited remote customer training (through webinars), phone support, help files, and documentation. Basic support request is typically handled the same day. Consultant provides "Service NOT Software".

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

A. N/A

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City updated of the status of performance by delivering the following status reports:

A. Upon request by the Contract Officer.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found reasonably satisfactory and accepted by City. City has reviewed the software solution and buying it as is.

V. Consultant will utilize the following personnel to accomplish the Services:

A. Consultant support staff

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following Services at the following rates for the February 1, 2022 through February 1, 2025 term:

		RATE	TIME	SUB-BUDGET
A.	Citizen Engagement with Mobile App	N/A	N/A	\$4,500.00/per year
B.	Fleet Management Module	N/A	N/A	\$13,500.00/per year
C.	Public Works Package (Basic)	N/A	N/A	\$13,500.00/per year

- II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**
- III. The City will compensate Consultant for the Services performed upon submission of a valid invoice, in accordance with Section 2.2. Each invoice is to include a description of software license fees.**
- IV. The total compensation for the Services shall not exceed \$202,660 (with \$94,500 of this amount being attributable to Services from February 1, 2022 through February 1, 2025), as provided in Section 2.1 of this Agreement.**
- V. Consultant's billing rates for all personnel are attached as Exhibit C-1. N/A**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

FOR THE FEBRUARY 1, 2022 THROUGH FEBRUARY 1, 2025 TERM

- I. Consultant shall perform all services in Exhibit "A" to Amendment No. 4 to this Agreement for the period of February 1, 2022 through February 1, 2025.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
 - A. N/A.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**