

**AMENDMENT NO. 1**

**TO PUBLIC WORKS AGREEMENT**

THIS AMENDMENT TO PUBLIC WORKS AGREEMENT (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and CROSSTOWN ELECTRICAL & DATA, INC., a California corporation (“Contractor”), is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023.

**RECITALS**

A. City and Contractor entered into that certain Public Works Agreement dated May 4, 2021 (“Agreement”) whereby Contractor agreed to complete City Project No. 1628: Traffic Signal Installation at the intersection of Tajauta Avenue and Del Amo Boulevard (“Project”), for a Contract Sum not to exceed \$266,393.00.

B. During the same City Council meeting on April 20, 2021, where the City Council awarded Contractor the contract to complete the Project, the City Council also approved a 15% contingency in the amount of \$59,097.90 to provide for funding of any unforeseen circumstances during construction.

C. The Project has experienced construction delays caused by the long lead time of traffic signal equipment and the location of utilities, which required changes to the traffic signal pole layout. The various changes in conditions and modifications to scope resulting from revisions to the traffic signal pole layout have been captured in Construction Change Order #1 in the amount of \$130,884.27.

D. The Project delays will necessitate extension of the Schedule of Performance and expiration of the Agreement term.

E. The City and Contractor now desire to amend the Agreement to extend the Project completion deadline to September 30, 2023 and Agreement expiration date, and to increase the Contract Sum to \$416,393.00 to reflect the amount of \$130,884.27 for Construction Change Order #1 (which was approved and ratified by City Council on January 17, 2023) plus an additional amount of \$19,115.73 which will serve as an additional construction contingency to fund additional unforeseen circumstances.

**TERMS**

**1. Contract Changes.** The Agreement is amended as provided herein (new text is identified in *bold italics*, deleted text in ~~strike through~~):

**A. Section 2.1 (Contract Sum) of the Agreement is hereby amended to read in its entirety as follows:**

## **“2.1. Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in Contractor’s Bid attached hereto as Exhibit A and incorporated herein by this reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation of *not to exceed Four Two Hundred Sixteen Sixty Six Thousand Three Hundred Ninety Three Dollars (\$416,393.00 \$266,393.00)* (“**Contract Sum**”) for completion of the work. *The Contract Sum of \$416,393.00 is inclusive of the amount of \$130,884.27 reflected in Construction Change Order #1 plus an additional amount of \$19,115.73 (“Additional Contingency”) which will serve as an additional construction contingency to fund additional unforeseen circumstances; however, it is anticipated that the Additional Contingency will not be needed to complete the Project and therefore, will not be paid to Contractor.*”

**B. Section 3.1 (Schedule of Performance) of the Agreement is hereby amended to read in its entirety as follows:**

### **“3.1 Schedule of Performance.**

*Contractor* ~~The Contract time of completion shall be~~ **complete the Project by no later than September 30, 2023** ~~100 working days from the date of issuance of “Notice to Proceed” or 30 working days from the date the signal poles are received (whichever occurs later), as specified in the Bidding Schedule.~~ Long lead-time materials shall be ordered within 7 days from receiving the “Notice to Proceed.” Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply. The term of this Agreement shall expire ~~two (2) years following the Effective Date or upon City’s acceptance of the Project, whichever occurs first.~~

**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 to the Agreement.

**3. Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor 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.

Contractor 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 Contractor that, as of the date of this Amendment, Contractor 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.

[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 R. Bradshaw, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Sunny K. Soltani, City Attorney  
[rjl]

**CONTRACTOR:**

CROSSTOWN ELECTRICAL & DATA, INC., a California corporation

By:\_\_\_\_\_  
Name: David P. Heermance  
Title: President

By:\_\_\_\_\_  
Name: Benjamin Heermance  
Title: Chief Financial Officer

**Two corporate officer signatures required when Contractor 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. CONTRACTOR’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 CONTRACTOR’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 \_\_\_\_\_, 2023 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.

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	_____
_____	_____
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)	NUMBER OF PAGES
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	_____
_____	_____
<b>SIGNER IS REPRESENTING:</b>	DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))	_____
_____	_____
_____	SIGNER(S) OTHER THAN NAMED ABOVE

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<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER  <input type="checkbox"/> PARTNER(S) <span style="margin-left: 100px;"><input type="checkbox"/> LIMITED</span> <span style="margin-left: 100px;"><input type="checkbox"/> GENERAL</span> <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	_____ TITLE OR TYPE OF DOCUMENT
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ NUMBER OF PAGES
_____ _____	_____ DATE OF DOCUMENT
_____ _____	_____ SIGNER(S) OTHER THAN NAMED ABOVE