

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 Siemens Industry, Inc., a Delaware corporation (“Consultant”) is effective as of the 19th day of June, 2021.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated June 19, 2018 (“Agreement”) whereby Consultant agreed to provide City with services related to heating, ventilating and air conditioning maintenance, including maintenance by use of computers.

B. The Agreement provided for a three-year term, with an option of City to extend the term for one additional year at City’s sole discretion.

C. City desires to exercise its option to extend the term of the Agreement, and City and Consultant agree that the compensation for the additional year of services shall not exceed \$87,180, thereby increasing the contract sum from \$250,476 to \$337,656, and desire to amend the Agreement accordingly.

TERMS

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

A. A new Section 1.10, “Compliance with Labor and Wage Laws,” is hereby added to the Agreement, effective June 19, 2018, to read in its entirety as follows:

“1.10 Compliance with Labor and Wage Laws.”

Certain portions of the Services may be subject to prevailing wages under the Labor Code and to the extent such is true, the below provisions will apply.

(a) **Prevailing Wages.** Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Consultant shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

(b) Penalty for Failure to Pay Prevailing Wages. To the extent prevailing wages may apply to any portion of the Services, Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

(c) Payroll Records. To the extent prevailing wages may apply to any portion of the Services, Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(d) Indemnification. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with applicable prevailing wage laws.”

B. Section 2.1, “Contract Sum,” is 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 Consultant the amounts specified in the ‘Schedule of Compensation’ attached hereto as Exhibit ‘C’ and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed ***Three Hundred Thirty-Seven Thousand Six Hundred Fifty-Six Dollars (\$337,656)*** ~~Two Hundred Fifty Thousand Four Hundred and Seventy Six Dollars (\$250,476.00)~~ (the ‘Contract Sum’), unless additional compensation is approved pursuant to Section 1.8.”

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

“3.4 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 but not exceeding *four (4)* ~~three (3)~~ years from the date hereof, ~~unless extended for one (1) additional year at the sole discretion of City, except as otherwise provided in the Schedule of Performance (Exhibit ‘D’).~~”

D. Section I of Exhibit "C," "Schedule of Compensation," is hereby amended to read in its entirety as follows:

"I. All Services listed in Exhibit 'A' shall be compensated by a flat fee in accordance with the following flat fee schedule irrespective of the number of hours actually incurred by Consultant:

Year 1	7/1/2018 to 06/30/2019	\$83,644 annually	paid \$6,972 monthly in arrears
Year 2	7/1/2019 to 06/30/2020	\$82,176 annually	paid \$6,848 monthly in arrears
Year 3	7/1/2020 to 06/30/2021	\$84,636 annually	paid \$7,053 monthly in arrears
Year 4	7/1/2021 to 6/30/2022	\$87,180 annually	paid \$7,265 monthly in arrears

E. Section II of Exhibit "C," "Schedule of Compensation," is hereby deleted in its entirety, effective as of June 19, 2018, as though it was never included in the Agreement.

F. Section III of Exhibit "C," "Schedule of Compensation," is hereby amended to read in its entirety as follows:

"III. The total compensation for the Services shall not exceed ***Three Hundred Thirty-Seven Thousand Six Hundred Fifty-Six Dollars (\$337,656)*** ~~Two Hundred Fifty Thousand Four Hundred and Seventy-Six Dollars (\$250,476.00)~~ as provided in Section 2.1 of this Agreement."

G. Section IV of Exhibit "D," "Schedule of Performance," is hereby amended to read in its entirety as follows:

"IV. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until ***June 30, 2022*** ~~completion of the services but not exceeding three (3) years from the date hereof, unless extended for one (1) additional year at the sole discretion of City.~~"

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 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, 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.

[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:

Joy Simarago, Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

CONSULTANT:

SIEMENS INDUSTRY, INC., a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:
Address:

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 _____, 2021 before me, _____, personally appeared _____, 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: _____

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

INDIVIDUAL

CORPORATE OFFICER

_____ TITLE(S)

PARTNER(S)

LIMITED
GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ SIGNER(S) OTHER THAN NAMED ABOVE

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OTHER _____

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SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))
