

## **AMENDMENT NO. 3**

### **TO AGREEMENT FOR CONTRACT SERVICES**

**THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES** (“Amendment No. 3”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and SWAYZER CORPORATION, a California corporation (“Contractor”) is effective as of the 7<sup>TH</sup> day of December, 2021.

#### **RECITALS**

A. City and Contractor entered into that certain Contract Services Agreement for landscape maintenance services dated January 18, 2018, (“Agreement”) whereby Contractor agreed to provide landscape maintenance services for certain City medians, service roads, and slopes, for a three (3) year term commencing on January 1, 2018, and ending December 31, 2020 for a not-to-exceed amount of \$797,400.00.

B. On September 1, 2018, City and Contractor amended the Agreement (“Amendment No. 1”) to include Additional Landscape Maintenance Services for an initial period of six (6) months from September 1, 2018, through February 28, 2019, with one (1) four-month extension option (running from March 1, 2019, to June 30, 2019), as more particularly described in Exhibit A-1 of Amendment No. 1.

C. Pursuant to Amendment No. 1, the parties agreed that the Additional Landscape Maintenance Services will be performed for \$35,172.00 per month, for a total of \$211,032.00.00 for the initial six (6) month period. This increased the Agreement’s total Contract Sum to \$1,008,432.00.

D. Amendment No. 1 also provided that in the event that the four-month extension option to extend the period of the Additional Landscape Maintenance Services pursuant to Section IV of Exhibit A-1 of Amendment No. 1 were exercised, the monthly rates for the Additional Landscape Maintenance Services for the period of six (6) months from September 1, 2018, through February 28, 2019, as provided in Section 1(d) of Amendment No. 1, shall also be utilized for the four-month extension provided in Section IV of Exhibit A-1 of Amendment No. 1.

E. Amendment No. 1 also corrected a typographical error in Section I of Exhibit B relating to the ending date of the Agreement, by amending Section 3.4 of the Agreement accordingly to correct the typographical error.

F. On November 6, 2018, City issued a change order to extend the Agreement term by an additional four (4) months at \$35,172 per month for a total of \$140,688 for the four month period. However, only one (1) additional month was needed and therefore, only \$35,172 was used from the change order.

G. In fiscal year 2019-2020, the Contract Officer exercised her authority under Section 1.8 of the Agreement and authorized an additional \$25,000 in compensation to cover the costs of additional median landscape services beyond that specified in the Scope of Services of the Agreement.

H. Section 3.4 of the Agreement allows the City to extend the Agreement term for three (3) consecutive one-year terms, upon delivery to Contractor of a notice of such election thirty (30) days prior to the expiration of the term.

I. On November 12, 2020, City and Contractor amended the Agreement (“Amendment No. 2”) to reflect City’s exercise of the first of its three (3) one-year options to extend the term of the Agreement, from January 1, 2021 through December 31, 2021, and increase the Contract Sum by \$265,800, for a total Contract Sum of not to exceed \$1,334,404.

J. City and Contractor now desire to again amend the Agreement to reflect the City’s exercise of the second of its three (3) one-year options to extend the term of the Agreement from January 1, 2022, through December 31, 2022, and increase the Contract Sum by \$265,800.00, for a total Contract Sum of not to exceed \$1,600,204.00.

## TERMS

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

**A. Section 2.1, “Contract Sum,” of the Agreement is hereby amended to read as follows:**

“Subject to any limitations set forth in this Agreement, City agrees to pay Contractor 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 ***One Million Six Hundred Thousand Two Hundred Four Dollars and No Cents*** ~~One Million Three Hundred Thirty Four Thousand Four Hundred Four Dollars and No Cents (\$1,600,204.00 \$1,334,404.00)~~ (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.12.”

**B. Section 3.4, “Term,” of the Agreement, is hereby amended to read as follows:**

“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 and shall expire no later than December 31, ***2022*** ~~2021~~ (“Term”). City may in its sole discretion, extend the Term of this Agreement by up to ***one (1)*** ~~two (2)~~ consecutive one-year terms, upon delivery to Contractor of a notice of such election Thirty (30) days prior to the expiration of the Term”

**C. Section IV of Exhibit C, “Schedule of Compensation,” of the Agreement is hereby amended to read as follows:**

“IV. The total compensation for all Services under this Agreement shall not exceed ***One Million Six Hundred Thousand Two Hundred Four Dollars and No Cents*** ~~One Million Three Hundred Thirty Four Thousand Four Hundred~~

~~Four Dollars and No Cents (\$1,600,204.00~~ \$1,334,404.00) as provided in Section 2.1 of this Agreement.”

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 3, all provisions of the Agreement, Amendment No. 1, and Amendment No. 2 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 3, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 3, Amendment No. 2, and Amendment No. 1 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 and Amendments Nos. 1 and 2. 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 and Amendment Nos. 1 and 2. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 1, Amendment No. 2, and this Amendment No. 3, is currently an effective, valid, and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment No. 3, 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 No. 3, 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 No. 3.

5. **Authority.** The persons executing this Amendment No. 3 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. 3 on behalf of said party, (iii) by so executing this Amendment No. 3, such party is formally bound to the provisions of this Amendment No. 3, and (iv) the entering into this Amendment No. 3 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 No. 3 on the date(s) set forth below with express intent that this Amendment No. 3 shall be effective as of December 7, 2021.

**CITY:**

CITY OF CARSON, a municipal corporation

\_\_\_\_\_  
Lula Davis Holmes, Mayor

Date \_\_\_\_\_, 2021

**ATTEST:**

\_\_\_\_\_  
Joy Simarago, Deputy City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

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

**CONTRACTOR:**

SWAYZER CORPORATION, a California corporation

By: \_\_\_\_\_  
Name: Samuel Swayzer  
Title: President

By: \_\_\_\_\_  
Name: Ezekiel Swayzer  
Title: Chief Financial Officer

Address: 1665 E. Del Amo Blvd.  
Carson, CA. 90746

Date \_\_\_\_\_, 2021

**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 \_\_\_\_\_, 2021 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.

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

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<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	_____
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	TITLE OR TYPE OF DOCUMENT
<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