

## AMENDMENT NO. 1

### TO PUBLIC WORKS AGREEMENT

**THIS AMENDMENT TO PUBLIC WORKS AGREEMENT** (“Amendment No. 1”) by and between the CITY OF CARSON, a California municipal corporation (“City”), and ND CONSTRUCTION COMPANY, INC., a California corporation (“Contractor”), is effective as of the [REDACTED] day of [REDACTED], 2023.

#### RECITALS

A. City and Contractor entered into that certain Public Works Agreement dated August 9, 2022 (“Agreement”) whereby Contractor agreed to remove and install bus shelters, bus benches, trash receptacles and items ancillary thereto on a citywide basis (“Project”), for a cost not to exceed \$535,272.

B. On or around mid-December 2022, a City inspector determined that the installed shelters would require replacements of entire sidewalks from score to score at each worksite (“Over-Excavation Work.”) as opposed to needing individual cut-outs for footings for each shelter leg. Contractor’s bid submitted for the Project assumed there would be individual cut-outs for footings.

C. On or about January 3, 2023, under City’s Contract Officer authority pursuant to Section 1.12 of the Agreement, the Contract Sum was increased by \$25,000 for extra work that was to be performed by the Contractor for the Over-Excavation Work which amount City and Contractor believed at that time would be sufficient for that extra work.

D. On or about March 1, 2023, Contractor informed staff that, due to an unexpected rise in the costs of labor and materials, the Over-Excavation Work would cost approximately \$175,000 more across the twenty five (25) total sites. The anticipated completion date for the Project will now be May 31, 2023.

E. Now, City and Contractor desire to amend the Agreement for the purpose of accounting for the unexpected costs of the Over-Excavation Work for the twenty five (25) total sites at a cost of approximately \$175,000 and extending the completion date of the Agreement to May 31, 2023. The \$175,000 is inclusive of the \$25,000 approved under Contract Officer authority, thereby resulting in an increased Contract Sum from \$535,272 to \$710,272.

#### 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:**

“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 "C" 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, including reimbursement of Contractor's expenses, of an amount not to exceed *Seven Hundred Ten Thousand Two Hundred Seventy Two Dollars (\$710,272.00)* ~~Five Hundred Thirty Five Thousand Two Hundred Seventy Two Dollars (\$535,272.00)~~ ("Contract Sum") for completion of the work."

**B. Section 3.1, "Schedule of Performance," is hereby amended to read in its entirety as follows:**

"Contractor shall complete the Project *by no later than May 31, 2023* ~~within One Hundred and Twenty (120) calendar days after receiving a "Notice to Proceed" from the City in accordance with any schedule contained in or required to be provided by the Proposal or Bid Documents, and~~ , *with* any revisions thereof approved by the City in writing. 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 one (1) year following City's acceptance of the Project."

**C. Section 5.5, "Performance and Payment Bonds," is hereby amended to read in its entirety as follows:**

"Concurrently with execution of this Agreement, Contractor shall deliver to the City all of the following bonds if the Contract Sum should exceed \$25,000:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than ~~\$535,272.00~~ *\$710,272.00*.

(b) A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than ~~\$535,272.00~~ *\$710,272.00*.

All bonds shall be on the applicable forms provided in Exhibit "D" and Exhibit "E" attached hereto and made part hereof. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released pursuant to Section 5.7 hereof."

**D. Exhibit C, "Contractor's Bid", is hereby amended to read in its entirety as follows:**

"§ **Scope of service will vary by stop - list to be provided by City**  
§ **City may add and/or remove additional stops as needed**

§ Prices must be wholly inclusive of all labor and material costs to perform the requested work

§ Prices must also factor in delivery/storage of materials at bidder's site

<b>Demolition and disposal of old amenities</b>		<b>Anticipated units</b>
1) Bus stop pole	<b>\$ <u>121</u> per unit</b>	60
2) Bus stop signage	<b>\$ <u>82</u> per unit</b>	80
3) Bus bench	<b>\$ <u>327</u> per unit</b>	191
4) Trash receptacle	<b>\$ <u>166</u> per unit</b>	186
5) Bus shelter	<b>\$ <u>1,250</u> per unit</b>	12

**Assembly and installation of new amenities**

1) Bus stop pole and related signage	<b>\$ <u>450</u> per unit</b>	TBD
2) Bus bench (34902-111/12252-121)	<b>\$ <u>630</u> per unit</b>	180
3) Trash receptacle (35708 pending)	<b>\$ <u>544</u> per unit</b>	78
4) Bus shelter (26088-00/26089-01/40490-00)	<b>\$ <u>9,391</u> per unit</b>	25
5) Deluxe Bus shelter (43564-00)	<b>\$ <u>20,609</u> per unit</b>	1
6) New concrete slab – 10’ on both sides	<b>\$ <u>3,500</u> per unit</b>	TBD
7) New concrete slab – 15’ on both sides	<b>\$ <u>4,500</u> per unit</b>	TBD

Additional costs to complete work:

Prepare/Supply “Typical” (Not site-specific) TC plans      **\$1,903 lump sum**

***Sidewalk replacement work for Bus shelters***      ***\$175,000 lump sum***

***Standard models @ \$6,500 x 24 units = \$156,000 (26088-00/26089-01/40490-00)***

***Deluxe model @ \$19,000 x 1 unit = \$19,000 (43564-00)***

**Total ~~IFB bid~~ amount including additional costs:** (based on anticipated units above)

\$710,272 ~~\$ 535,272.00.~~”

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

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 including all approvals given under Section 1.12 of 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 No. 1, 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. 1, 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. 1.

5. **Authority.** The persons executing this Amendment No. 1 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. 1 on behalf of said party, (iii) by so executing this Amendment No. 1, such party is formally bound to the provisions of this Amendment No. 1, and (iv) the entering into this Amendment No. 1 does not violate any provision of any other agreement to which said party is bound.

6. **Counterparts.** This Amendment No. 1 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. 1.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 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; sap]

**CONTRACTOR:**

ND CONSTRUCTION COMPANY, INC., a California corporation

By:\_\_\_\_\_  
Name: Michael A. Martin  
Title: President

By:\_\_\_\_\_  
Name: Linda Martin  
Title: Secretary  
Address: 2201 E Winston Rd  
Anaheim, CA 92806

**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.

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