

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 SWAYZER CORPORATION, a California corporation (“Consultant”), is effective as of the ___ day of _____, 2023. City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

A. The City’s maintenance services are subject to the State bidding laws known as the Uniform Public Construction Cost Accounting Act (“UPCCAA”) adopted by the City and as set forth in Section 2612 of its Municipal Code. Under UPCCAA, maintenance work of \$60,000 or less has no bidding requirement attached to it.

B. City and Consultant entered into that certain Agreement for Contract Services dated May 16, 2023 (“Agreement”), whereby Consultant agreed to perform median landscaping maintenance services for the City (“Services”) at the locations directed by City’s Contract Officer, for a total not to exceed amount of \$60,000, with the Agreement term set to expire June 30, 2023. As allowed under UPCCAA, City did not go out to bid for procurement of the Services. At the time the Agreement was executed, City staff believed there would be no need to extend the Agreement nor add to the not to exceed contract sum of \$60,000, as staff had plans to go out to bid by issuing an RFP for maintenance services on a City-wide basis, and the Services were intended only to serve as a stop-gap measure until the new contract was awarded.

C. Despite earnest efforts, City staff has experienced unexpected delays in issuing the RFP and now City is in need of continued maintenance services beyond June 30, 2023. Under UPCCAA, City has the option of awarding another contract for maintenance services to a contractor other than Consultant for \$60,000 or less, or to award that second contract to Consultant, without regard to any concerns that illegal splitting may have occurred because City staff sincerely believed that the Agreement would sufficiently serve its intended purpose as a stop-gap measure, and there was no attempt to evade State bidding requirements.

C. City and Consultant now desire to amend the Agreement to increase the not-to-exceed Contract Sum by an additional \$40,000 to allow Consultant to continue providing the Services through July 31, 2023, thereby increasing the Contract Sum to \$100,000.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (new text is indicated in *bold italics* and 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. 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 ~~One Hundred Sixty Thousand Dollars and Zero Cents (\$100,000.00)~~ **Sixty Thousand Dollars and Zero Cents (\$60,000.00)** ("Contract Sum").”

B. Section 3.4 (Term) of the Agreement is hereby 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 later than ~~July 31, 2023~~ **June 30, 2023**, except as otherwise provided in the Schedule of Performance (Exhibit "D").”

C. Exhibit "C" (Schedule of Compensation) of the Agreement is hereby amended to read in its entirety as follows:

See attached Exhibit "C.”

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 the 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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 K. Bradshaw, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

CONTRACTOR:

SWAYZER CORPORATION, a California corporation

By: _____
Name: Samuel Swayzer
Title: President

By: _____
Name: Ezekiel Swayzer
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.

<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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STATE OF CALIFORNIA

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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: _____

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EXHIBIT “C”

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

		RATE	TIME
A.	Maintenance of Hardscape Surfaces	\$2,962.50	Monthly
B.	Maintenance of Turf	\$3,950.00	Monthly
C.	Maintenance of Plant Area	\$12,837.50	Monthly

Not-to-Exceed

~~\$100,000~~\$60,000.00

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

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.** Line items for all the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

IV. The total compensation for the Services shall not exceed ~~\$100,000~~\$60,000.00, as provided in Section 2.1 of this Agreement.