

**AMENDMENT NO. 1**  
**TO DESIGN-BUILD AGREEMENT**

THIS AMENDMENT TO DESIGN-BUILD AGREEMENT ("Amendment") by and between the CITY OF CARSON, a California municipal corporation ("City") and TRANE U.S. INC, a Delaware corporation ("Design-Builder"), is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**RECITALS**

A. City and Design-Builder entered into that certain Design-Build Agreement dated January 26, 2021 ("Agreement") whereby Design-Builder agreed to provide design and construction services to address the air filtration, heating, ventilation, and air conditioning (HVAC) systems and roof at City Hall and the Community Center buildings ("Entire Project"), for a Contract Sum not to exceed \$5,822,925.00. The amount of the Contract Sum attributable to the design component of the Project ("Phase 1") was \$265,500.00 and the amount attributable to the construction component ("Phase 2") was \$5,557,425.00.

B. During the same City Council meeting on November 17, 2020, where the City Council awarded Design-Builder the contract to complete the Entire Project, the City Council also approved a 6% contingency budget in the amount of \$349,375.50 to provide for funding of any unforeseen circumstances during construction, bringing the total approved Entire Project budget to \$6,172,300.50.

C. The Entire Project has required City and Design-Builder to approve various change orders identified as Change Orders 1, 4R1, 5, 6, 8, 9 and 11 (collectively, "Change Orders 1-11"), due to various factors, including construction delays affected by supply chain issues resulting in price increases of materials and equipment as well as efforts to augment the Entire Project for the purpose of improving energy efficiencies of the HVAC systems at both City Hall and the Community Center. Change Order 1 included a credit to the City in the amount of \$134,805.13. The total amount of Change Orders 1-11 is \$1,260,593.97 which, when added to the Contract Sum of \$5,822,925.00, results in an adjusted Contract Sum of \$7,083,518.97. The City and Design-Builder now desire that the City Council ratify and approve Changer Orders 1-11. Much of the work under Change Orders 1-11 has been completed.

D. An additional change order resulting in a credit to City in the amount of \$96,172.32 ("Change Order 12") is needed for the following purposes: (i) \$3,082.80 for extra work for coil cleaning for AHU 1 at the Community Center, (ii) \$5,331.50 for extra work for the shutoff valve for Chiller 2 at City Hall, (iii) \$658.25 for labor and general contractor's markup, (iv) a credit to City in the amount of \$85,050 due to central control system and integration work that was removed from the Phase 2 scope, and (v) credit to City in the amount of \$20,194.87 for plasma air analysis that is no longer needed for the Entire Project. Such change order, when added to Change Orders 1-11 and the original Contract Sum of \$5,822,925.00, results in a further downward adjusted Contract Sum of \$6,987,346.65 (\$7,083,518.97 - \$96,172.32) . The City and Design-Builder now desire that the City Council approve and ratify Change Order 12. No work under Change Order 12 has commenced except for the coil cleaning for AHU 1 which work has been completed.

E. City Council's ratification and approval of Change Orders 1-11 and approval and ratification of Change Order 12 (collectively, "Collective Change Orders") will (i) expand the Scope of Work for Phase 2; (ii) increase the Contract Sum to \$6,987,346.65 due to the increase in the Phase 2 Contract Sum from \$5,557,425.00 to \$6,721,846.65; and (iii) require extension of the deadline to complete Phase II.

## 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 1.1 (Scope of Work) of the Agreement is hereby amended to read in its entirety as follows:**

**"1.1 Scope of Work.**

In compliance with all terms and conditions of this Agreement, the Design-Builder shall provide those services specified in the "Scope of Work" attached hereto as Exhibit "A" and Exhibit "A-1" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. ***Exhibit "A-1" represents the work set out in the Collective Change Orders.*** Such Scope of Work will be for design, construction and maintenance services, with each phase having distinct time periods during which services must be rendered. As a material inducement to the City entering into this Agreement, Design-Builder represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Design-Builder shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Design-Builder covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances."

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

**"2.1. Contract Sum; Project.**

Subject to any limitations set forth in this Agreement, City agrees to pay Design-Builder 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 ~~Six Five Million Nine Eight Hundred Eighty Seven Twenty Two Thousand Three Nine Hundred Forty Six Twenty Five Dollars and Sixty Five Cents (\$6,987,346.65)~~ ~~\$5,822,925.00~~ (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9. As set out in Exhibit "C," compensation for provision of the design services ("Phase 1") shall not exceed Two

Hundred Sixty Five Thousand Five Hundred Dollars (\$265,500.00) (“Phase 1 Contract Sum”), and compensation for the construction component (“Phase 2” or the “Project”) shall not exceed ~~Six Five Million Seven~~Five Hundred ~~Twenty One~~Fifty-Seven Thousand ~~Eight~~Four Hundred ~~Forty Six~~ Twenty-Five Dollars *and Sixty Five Cents* (~~\$6,721,846.65~~~~\$5,557,425.00~~) (“Phase 2 Contract Sum”). The Project will be located in two different locations: City Hall and the Community Center.”

**C. Section 5.4 (Performance, Payment and Warranty Bonds) of the Agreement is hereby amended to read in its entirety as follows:**

**“5.4 Performance, Payment and Warranty Bonds.**

(a) Concurrently with execution of this Agreement, Design-Builder shall deliver to the City a performance bond securing the faithful performance of the work described in Phase 2 of the Scope of Work, in an amount not less than ~~\$6,721,846.65~~~~\$5,557,425.00~~~~the Phase 2 Contract Sum~~. The performance bond shall include coverage for warranties provided hereunder for a period not to exceed twelve (12) months following City’s acceptance of the Project.

(b) Concurrently with execution of this Agreement, Design-Builder shall deliver to the City a payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work performed for Phase 2 described in the Scope of Work, in an amount not less than ~~\$6,721,846.65~~~~\$5,557,425.00~~~~the Phase 2 Contract Sum~~.

All bonds shall be on applicable forms provided to and approved by the City Attorney in advance of execution of this Agreement. 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 until released.”

**D. Exhibit “A-1” (Collective Change Orders) is hereby added to the Scope of Work of the Agreement immediately following Exhibit “A” and shall read in its entirety as follows:**

See attached Exhibit “A-1”

**E. Section I. of Exhibit D (Schedule of Performance) of the Agreement is hereby amended to read in its entirety as follows:**

**“I. Design-Builder shall perform all work timely in accordance with the following schedule:**

## Estimated Performance Deadline

### PHASE 1 - DESIGN

**Eighty Four (84) calendar days after City issues the Notice to Proceed.**

### PHASE 2 - CONSTRUCTION

1. Substantial Completion of construction, as defined in Section 1.6(b) of the Agreement.

***Four Two Hundred Thirteen ~~Forty Six~~ (413246) working calendar days after completion of Phase 1, or approval of all construction drawings by the City and receipt of all applicable permits, whichever is later. Both parties acknowledge permit approval was December 7, 2021.***

2. Final Completion, which is the completion of all punch list items, the City's inspection to confirm that the Project is complete, and the City Council's formal acceptance of the Project.

**Three (3) months after Substantial Completion."**

**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 Design-Builder each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Without limiting the generality of the foregoing, City and Design-Builder ratify, reaffirm, approve and authorize Change Orders 1-11, and ratify, reaffirm, approve and authorize Change Order 12. 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.

Design-Builder 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 Design-Builder that, as of the date of this Amendment, Design-Builder 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 written above.

**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]

**DESIGN-BUILDER:**

TRANE U.S. INC., a Delaware corporation

By:\_\_\_\_\_

Name:

Title:

By:\_\_\_\_\_

Name:

Title:

Address: 3253 E. Imperial Highway  
Brea, CA 92821

**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.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	<div>TITLE(S) PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div>	<div>TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	<div>NUMBER OF PAGES</div>
<input type="checkbox"/>	OTHER _____	
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		<div>DATE OF DOCUMENT</div>
		<div>SIGNER(S) OTHER THAN NAMED ABOVE</div>

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<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 _____	
SIGNER IS REPRESENTING:		DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))		
_____		
_____		
_____		SIGNER(S) OTHER THAN NAMED ABOVE



**EXHIBIT “A-1”**

**COLLECTIVE CHANGE ORDERS**

**SEE ATTACHED**