

AMENDMENT NO. 3

TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES (“Amendment”) by and between the **CITY OF CARSON**, a municipal corporation, and the **CITY OF CARSON in its capacity as the SUCCESSOR AGENCY TO THE DISSOLVED CARSON REDEVELOPMENT AGENCY**, a public entity organized and existing under California Health and Safety Code § 34173 (collectively “City” or “Agency”), and **TCM Group, Inc.**, a Hill International Company and a New Jersey corporation (“Contractor” or “Engineer”), is effective as of the 6th day of September, 2016.

RECITALS

A. City and Contractor entered into that certain Agreement for Contractual Services dated February 17, 2009 (“Agreement”) whereby Contractor agreed to provide construction management services to City in connection with that certain project identified as Wilmington Avenue Interchange Modification at the I-405 Freeway, Project 919 for a sum not to exceed \$2,998,788.

B. City and Contractor entered into Amendment No. 1 to the Agreement on February 19, 2013, whereby TMC Group, Inc., requested that its name be modified to “TMC Group, Inc., a Hill International Company” and whereby the termination date of the Agreement was extended to December 31, 2015.

C. City and Contractor entered into Amendment No. 2 to the Agreement on August 4, 2015, whereby City and Contractor (i) extended the term of the Agreement until December 31, 2016; (ii) increased the Contract Sum to \$3,778,778.16; (iii) modified the method of payment; (iv) listed Consultant’s employees who would be performing specific jobs under the Agreement; and (v) provided that the City would be reimbursed \$124,941.02 for overpayments, which amount would be taken from a sum of \$200,000 held in trust by the Redevelopment Agency for use towards reimbursement.

D. City and Contractor now desire to amend the Agreement for a third time to (i) extend the term of the Agreement until December 31, 2017; (ii) increase the Contract Sum to \$4,558,768.32; (iii) establish the method of payment for Construction Phase work completed after September 30, 2016; and (iv) replace Sean Rouhani with Zouheir Saleh in the position of Project Manager/Resident Engineer (RE).

TERMS

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

- (a) **The first paragraph of Section 2.1, Contract Sum, is hereby amended to read as follows:**

“For the services rendered pursuant to this Agreement, the Engineer shall be compensated in accordance with the “Cost Proposal” attached hereto as Exhibit “C” and incorporated herein by this reference, *as well as Section 2.4, 2.4(b), and 2.4(c)*, but not exceeding the maximum contract amount of ~~Three Million Seven Hundred and Seventy Eight Thousand, Seven Hundred and Seventy Eight Dollars and Sixteen Cents (\$3,778,778.16)~~ ***Four Million Five Hundred and Fifty Eight Thousand, Seven Hundred Sixty Eight Dollars and Thirty-Two Cents (\$4,558,768.32)*** (“Contract Sum”), except as provided in Section 1.9. The Contract Sum shall include the attendance of Engineer at all project meetings reasonably deemed necessary by the Agency; Engineer shall not be entitled to any additional compensation for attending such meetings.”

(b) **Section 2.4(c), entitled “Method of Payment for Construction Management Services for Construction Phase Work Performed after September 30, 2016,” is hereby added as follows:**

“i. Agency will compensate Contractor at a flat rate of Sixty Four Thousand Nine Hundred and Ninety Nine Dollars and Eighteen Cents (\$64,999.18) (“Monthly Rate”) per month for Construction Phase work performed by Contractor from October 1, 2016, until September 30, 2017. Total compensation for Construction Phase work from October 1, 2016, until September 30, 2017, shall not exceed Seven Hundred and Seventy Nine Thousand Nine Hundred and Ninety Dollars and Sixteen Cents (\$779,990.16) (“Construction Phase Sum”).

ii. Regardless of when Construction Phase work is completed, Contractor shall be paid no less than Five Hundred and Eighty Four Thousand Nine Hundred and Ninety Two Dollars and Sixty Two Cents (\$584,992.62) (“Minimum Total Payment”) for Construction Phase work completed from October 1, 2016, until September 30, 2017. If Construction Phase work is completed before the Engineer has received the Minimum Total Payment, Engineer may request the balance of the Minimum Total Payment in its next invoice.

iii. Engineer shall submit invoices once every month in the form approved by the Agency’s Administrative Services General Manager and shall include the number of hours worked for each discipline listed on Exhibit “C” and the hourly billing rates for employees engaged on the project. This information will be used solely for record keeping purposes and to assess work progress. Agency will pay invoices in full within thirty (30) days following receipt from Engineer and approval by the Agency of original invoices, except as provided in Section 2.4(c)(iv) and Section 7.3.

iv. Agency shall pay Engineer the Monthly Rate upon continuing approval to Agency’s satisfaction that the Construction Phase will be completed no later than September 30, 2017. However, if Agency determines upon review of any monthly invoice from Engineer that hours worked reasonably indicate that the

Construction Phase will not be completed by September 30, 2017, or if Agency determines on the basis of review of progress of Project 919 that the Construction Phase will not be completed by September 30, 2017, then, at Agency's sole discretion, Agency may reduce the Monthly Rate for the total remaining months which Agency reasonably estimates will be required for the Construction Phase to be completed, in order to ensure that the Construction Phase Sum will not be exhausted before the Construction Phase work is completed. In no event or under any circumstances will Agency pay Engineer more than the Construction Phase Sum for Construction Phase work beginning October 1, 2016, regardless of when the Construction Phase work is completed, unless such additional compensation is approved by City Council and/or the Agency.

v. This Section 2.4(c), insofar as it provides for payment for services, shall govern when in conflict with any other provision of the Agreement which provides for an "hourly billing rate of compensation" or any provisions of Exhibit "C" regarding payment.

(c) **Section 3.2, Schedule of Performance, is hereby amended as follows:**

"The execution of the Agreement does not constitute an authorization to proceed. The Agreement shall go into effect on **July 1, 2010** and the Engineer shall commence work after notification to proceed by the Agency, acting by and through its DSG General Manager. The contract shall end on ~~December 31, 2016~~ **December 31, 2017**, unless extended by contract amendment. The work described in Exhibit "A" as Task A.1 through Task A.3.4 shall be completed within 720 calendar days, which includes construction period and the post construction services, following Engineer's receipt of the Notice to Proceed, in accordance with Exhibit "B" and Exhibit "C", project schedule and estimated fee. Engineer shall have no claim for compensation for any services or work which has not been authorized in writing by the Agency's Notice to Proceed."

(d) **Exhibit C, in the section entitled "Construction Phase," is hereby amended as follows:**

- (i) "(To be completed by September 30, 2016)" is hereby replaced with "(To be completed by September 30, 2017)."
- (ii) "Sean Rouhani, PE" is hereby replaced with "Zouheir Saleh, PE" in the position of Project Manager/RE.

(e) **Exhibit C, in the section entitled "Post-Construction Phase," is hereby amended as follows:**

- (i) "Sean Rouhani, PE" is hereby replaced with "Zouheir Saleh, PE" in the position of Project Manager/RE.

2. **Continuing Effect of Agreement.** Except as amended by this Agreement, 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 Contractor 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.

Contractor 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 Contractor that, as of the date of this Amendment, 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.

5. **Authority.** The persons executing this Agreement 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 Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement 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 Agreement on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

ATTEST:

Donesia Gause, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BWB]

CONSULTANT:

TCM GROUP, INC., a Hill International Company
and a New Jersey 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 _____, 2016 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**
- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

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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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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