

THIRD AMENDMENT TO LANDSCAPE MAINTENANCE SERVICES AGREEMENT

THIS THIRD AMENDMENT TO LANDSCAPE MAINTENANCE SERVICES AGREEMENT ("Amendment No. 3") is made and entered into by and between the **CITY OF CARSON**, a municipal corporation ("City") and **SWAYZER CORPORATION**, a California corporation ("Contractor"). The City and Contractor are hereinafter individually referred to as "Party" and collectively referred to as "Parties." Terms that are capitalized shall have the same meaning set forth in the original Agreement between the parties unless expressly stated otherwise. This Amendment No. 3 is effective as of the date it becomes fully-executed by the Parties.

RECITALS

A. Whereas, on July 1, 2010, City and Contractor entered into that certain **LANDSCAPE MAINTENANCE SERVICES AGREEMENT** expiring June 30, 2013 and renewable for another three-year term at the Parties' mutual election ("Agreement"), for Contractor to provide City with landscaping services as set forth in the Agreement and more particularly described in Exhibit C to the Agreement.

B. Whereas, on June 4, 2013, City approved Contractor's request to renew the Agreement for an additional three years, thus extending the Agreement term to June 30, 2016.

C. Whereas, on September 20, 2016, the City approved an amendment to the Agreement extending the expiration term of the Agreement to December 31, 2016 ("Amendment No. 1").

D. Whereas, on December 6, 2016, the City approved a second amendment to the Agreement extending the expiration term of the Agreement to March 31, 2017 ("Amendment No. 2").

E. Whereas, the Agreement will expire on March 31, 2017, pursuant to Amendment No. 2, and the parties desire to further amend the Agreement to extend for another three month term such that the Agreement expires on June 30, 2017.

F. Whereas, the parties agree that the compensation for the three month term shall not exceed \$15,125 per month.

G. Whereas, Contractor agrees that the City has paid in full for all services rendered by Contractor pursuant to the Agreement and Amendment No. 1, and Amendment No. 2 during the time period of July 1, 2010 to March 31, 2017, and, therefore, Contractor desires to release the City from all liability for any payment that may be owed by City for services rendered by Contractor during that time period.

NOW THEREFORE, for valuable consideration the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. **Incorporation.** The Recitals set forth above, the Agreement and Exhibits A-D to the Agreement; Amendment No. 1, including its exhibits; and Amendment No. 2, including its exhibits, are hereby incorporated herein by this reference.

2. **Agreement Term.** Item 2 (“CONTRACT DURATION”) of SUPPLEMENTARY GENERAL CONDITIONS of the Agreement shall be amended such that the Agreement expires on June 30, 2017.

3. **Compensation.** For the period April 1, 2017 to June 30, 2017, the total compensation under the Agreement shall not exceed Fifteen Thousand One Hundred Twenty Five Dollars (\$15,125) per month.

4. **General Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Contractor, on behalf of itself, its officers, employees and agents (collectively the “Contractor”) does hereby release and forever discharge the City, its officers, employees and agents (collectively the “Released Parties”) of and from any and all manner of action or actions, cause or causes of action, at law or in equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, losses, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter collectively “Claims”), which Contractor may now have or may hereafter have against the Released Parties, arising out of, based upon, or relating to services rendered by Contractor pursuant to the Agreement, Amendment No. 1, and Amendment No. 2, including any services rendered during the time period of July 1, 2010 to March 31, 2017.

5. **Release of Unknown Claims.** The release set forth above in this Amendment No. 3 is a release of Contractor’s Claims against any or all of the Released Parties except for any claims that may arise upon a Party’s breach of the terms of this Amendment. It is the clear and unequivocal intention of the Parties in executing this Amendment No. 3 that it shall be effective as a full and final accord and satisfaction, release, and discharge of each and every claim specifically or generally referred or not referred to in this Amendment. In furtherance of said intention, Contractor acknowledges that it understands Section 1542 of the Civil Code of the State of California, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Contractor hereby waives and relinquishes any and all rights and benefits which it has or may have under Section 1542 of the Civil Code of the State of California, and under any and all similar provisions contained in the law of any and all other jurisdictions, within and without the United States, to the full extent that it may lawfully so waive all such rights and benefits pertaining to the subject matter of the releases contained in this Amendment. Contractor hereby acknowledges that it is aware that Contractor may hereafter discover facts in addition to

or different from those which it now knows or believes to be true with respect to the subject matter of this Amendment, but that it is the clear and unequivocal intention of Contractor to hereby fully, finally and forever settle and release each and every claim specifically or generally referred to in this Amendment, and that in furtherance of said intention, any and all releases herein given shall be and remain in effect as full and complete general releases.

6. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 3, all provisions of the Agreement 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.

7. **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 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.

8. **Counterparts.** This Amendment No. 3 may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

9. **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 S. Gause, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney

CONTRACTOR:

SWAYZER CORPORATION, a California corporation

By: Samuel Swayzer
Title: President

By: Ezekiel Swayzer
Title: CFO

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

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 _____, 2017 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

☐

TITLE(S) _____

☐ PARTNER(S)

☐ ATTORNEY-IN-FACT

☐ 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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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 _____, 2017 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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CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL CORPORATE OFFICER

☐ _____

TITLE(S) _____

PARTNER(S) _____

☒ ATTORNEY-IN-FACT ☐

LIMITED GENERAL _____

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