

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
WITH KSM ELECTRIC, INC.**

This First Amendment to Professional Services Agreement (“First Amendment”) is made and entered into as of January 9, 2023 (“Effective Date”) by and between the City of Upland, a California municipal corporation (“City”) and KSM Electric, Inc., a California Corporation (“Contractor”). City and Contractor are sometimes referred to herein individually as a “Party” and collectively as “Parties.”

RECITALS

A. WHEREAS, the City and the Contractor have entered into a Professional Services Agreement, dated October 28, 2019, for the purpose of providing Plant 6 Motor Control Center and Booster Station Maintenance (the “Original Agreement”).

B. WHEREAS, the Parties now desire to amend the Original Agreement in order to: include additional funds for the continued performance of services in accordance with the compensation provisions of the Original Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, conditions, and promises contained in this First Amendment and the Original Agreement, the Parties mutually agree as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Compensation. The maximum compensation for Services performed pursuant to this First Amendment shall be Sixty Thousand Dollars (\$60,000) thereby increasing the total compensation from Two Hundred Fifty Thousand Dollars (\$250,000) to Three Hundred Ten Thousand Dollars (\$310,000). Work shall be performed pursuant to the provisions of the Original Agreement.

3. Amendment to Section 3(a) of the Original Agreement. Section 3(a) of the Original Agreement shall be amended to read as follows:

“a. The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract. Unless an alternative schedule is mutually agreed to by the parties, CONTRACTOR shall complete the Job within one hundred eighty (180) calendar days from the execution of this contract or relevant amendment. CONTRACTOR further agrees to the assessment of liquidated damages in the amount of \$250.00 for each calendar day the Job remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due to the CONTRACTOR under this Agreement. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.”

4. Full Force. Except as amended by this First Amendment, all provisions of the Original Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this First Amendment.

5. Electronic Transmission. A manually signed copy of this First Amendment which is transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this First Amendment for all purposes. This First Amendment may be signed using an electronic signature.

6. Counterparts. This First Amendment may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
WITH KSM ELECTRIC, INC.**

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment on the Effective Date first herein above written.

**CITY OF UPLAND,
a California municipal corporation**

**CONTRACTOR
KSM ELECTRIC, INC., a California
corporation**



Michael Blay, City Manager



Signature

Susan MacDonald
Name

President
Title

Attest:



Keri Johnson, City Clerk




Signature

Kevin MacDonald
Name

Secretary
Title

Approved As to Legal Form:



Stephen Deitsch, City Attorney