

AMENDMENT NO. 1 TO THE CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
BELL TEXTRON, INC.

THIS FIRST AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Bell Textron, Inc., represented by Veronica Rojas, Senior Manager (the "Contractor"). The City and the Contractor are sometimes each referred to as a "Party," and collectively, as the "Parties." The Amendment is effective as of November 5, 2022 (the "Effective Date").

RECITALS

WHEREAS, on March 23, 2022, the City issued Invitation to Bid No. 1916 and Addendum No. 1-3, seeking a requirements contract for a new helicopter to perform mosquito control aerial applications and other duties as assigned;

WHEREAS, the Contractor was the lowest, responsive bidder;

WHEREAS, on June 29, 2022, the City and the Contractor entered into a Contract for one, new rotary-wing aircraft-helicopter and its accessories (the "Agreement");

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to add additional accessories to the list of required bid items in Invitation to Bid No. 1916, to increase the compensation under the Agreement, to modify certain terms and conditions; and

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Term.** The services provided, under this Amendment shall begin, on November 5, 2022, and shall end, on June 28, 2023, in accordance with the original Agreement.

2. **Compensation.** The compensation described in the Contractor's Bid amounted to \$1,761,174.37 and will increase by \$332,389.00 to a total amount not to exceed \$2,093,563.37. Fifteen (15%) percent of the cost of the accessories, totaling \$49,858.35, will be paid to the Contractor by an ACH payment, once invoiced.

3. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

ARTICLE I- THE CONTRACTOR'S OBLIGATIONS

Bid Specifications, listed under Attachment "A" in the Invitation to Bid, shall include the following under Required Bid Items:

Radar altimeter Garmin GRA55, a second VHF Comm- Garmin GTR 225B, an automatic door opener for Co-pilot door, and automatic door openers for the pilot door, an avionics upgrade, operator accessory package, ground handling wheels, a

pre-flight step and handle kit, a Garmin 3 Axis autopilot, an expanded avionics shelf (AA), sliding windows for the pilot and co-pilot, and a 3rd evaporator air conditioning system.

Terms and Conditions, listed under Attachment "B" in the Invitation to Bid, shall provide for the following:

3. Assignment

A. Neither a Contractor nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council.

B. A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Contractor or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Contractor or subcontractor that exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the Contractor or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Contractor or subcontractor exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.

25. Living Wages

A. Definitions. Unless otherwise expressly provided in this Amendment, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");

2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and

3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection (D) below for any work performed during calendar year 2024 or thereafter.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024, using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“Article”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Amendment are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to

engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. **Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Amendment, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE IV- FORCE MAJEURE

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by the City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence or misconduct of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

B. **Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

C. **Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed ninety (90) days. During such time of suspension, the Parties will not be liable nor responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or

- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section (C)(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

4. **Change Order Recordation.** The Contractor will perform any applicable recordation requirements set forth in La. R.S. 38:2192 and La. R.S. 38:2222, including without limitation the payment of any associated costs. The Contractor will provide the City with a copy of each recordation within thirty (30) days after approval of the associated plan change or amendment.

5. **Special Conditions for FEMA Contracts.** The "Special Conditions for FEMA Contracts," attached as Exhibit "A" to this Agreement, are expressly incorporated into the Agreement and effective immediately if the City has indicated it will or may seek reimbursement from FEMA in the procurement documents or upon the City's notice to the Contractor that the City intends to seek reimbursement from FEMA in connection with the work to be performed under this Agreement.

6. **Convicted Felon Statement.** The Contractor swears that it complies with City Code Section 2-8(c). No Contractor principal, member, or officer has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

7. **Non-Solicitation Statement.** The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

8. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

9. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

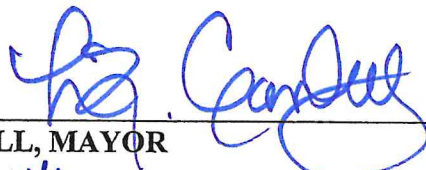
10. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Amendment.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 18th of November, 2022.

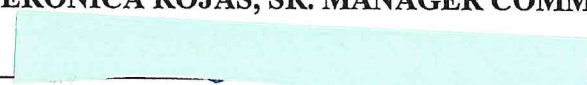
FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Tracy Tyle

BELL TEXTRON, INC.

BY: 
VERONICA ROJAS, SR. MANAGER COMMERCIAL CONTRACTS


FEDERAL TAX I.D.

[EXHIBIT "A" ON NEXT PAGE]

SPECIAL CONDITIONS FOR FEMA COMPLIANCE

The Contract may be subject to FEMA reimbursement. Notwithstanding any provision of the Contract to the contrary, the following terms and conditions will apply:

A. TERMINATION FOR CAUSE:

The City and the Contractor shall each have the right to terminate this Contract for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons, therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

B. TERMINATION FOR CONVENIENCE:

The City shall have the right to terminate this Contract without cause by giving the Contractor written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Contractor only for those Services performed up to and through the date of termination.

C. RECORDS RETENTION AND ACCESS:

The Contractor shall grant the City, the State of Louisiana, the Federal Emergency Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are pertinent to this Contract for the purpose of making audit, examination, and excerpts.

The Contractor shall retain all required records for five (5) years or until such time as the State of Louisiana or the City make final payments and all other pending matters related to the Contract are closed.

D. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:

As applicable, the Contractor shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);

- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

E. DEBARMENT, SUSPENSION, AND INELIGIBILITY:

The Contractor represents and warrants that it and its sub-contractors are not debarred, suspended, or placed in ineligibility status in the System for Award Management (“SAM”) in accordance with the applicable OMB guidelines relating to government debarment and suspension regulations.

F. REMEDIES AND SANCTIONS AGAINST CONTRACTOR’S DEFAULT:

The City retains all rights and recourse under Louisiana law to enforce this Contract or recover damages in connection with any Contractor breach or violation hereof.

[END OF AMENDMENT]