

K22-1223

AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

RETIF OIL & FUEL, L.L.C.

ITB No. 2298-02433

AUTOMATED FUEL DISPENSING AND RECORD KEEPING SERVICES

THIS THIRD AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Retif Oil & Fuel, L.L.C., represented by Kenneth J. Retif, Chief Executive Officer (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of February 1, 2023 (the “**Effective Date**”).

RECITALS

WHEREAS, on February 1, 2019, the City and the Contractor entered into a Requirements Contract for the provision of automated fuel dispensing and record keeping services for the specific purpose of meeting the City’s vehicle and equipment operational requirements (the “**Agreement**”);

WHEREAS, on February 1, 2020, the City and the Contractor entered into the first amendment to the Agreement to extend the term for two (2) additional years and to modify its terms and conditions;

WHEREAS, on February 1, 2022, the City and the Contractor entered into the second amendment to the Agreement to extend the term for one (1) additional year and to modify its terms and conditions;

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this third Amendment and final amendment to extend the term of the Agreement for one (1) additional year and to modify its terms and conditions; and

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

1. **Extension.** In accordance with Article III, Section (B) of the Agreement, the term is extended for an additional one (1) year from the Effective Date through January 31, 2024.
2. **Price.** The City and the Contractor reaffirm the price proposal submitted by the Contractor in response to the City’s Invitation to Bid No. 2298-02433.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

ARTICLE I-THE CONTRACTOR’S OBLIGATIONS

1. **Invoices.** The Contractor must submit invoices monthly (unless agreed otherwise between the Parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than ten (10) calendar days following the end of the period covered by the invoice. Untimely invoices may result

in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- a. Name of Contractor;
 - b. Date of Invoice;
 - c. Invoice Number;
 - d. Contract or BRASS Number issued by the City (i.e., K#);
 - e. Name of the City Department to be invoiced (i.e., Equipment Maintenance Division);
 - f. Description of the Services completed;
 - g. FEMA or HUD project number, if applicable.
2. Invoices will be processed in accordance with Article I of the Agreement.
 3. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.
 4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

ARTICLE II-THE CITY'S OBLIGATIONS

1. **Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing those goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted, and upon receipt by the City of a properly submitted invoice via the City's supplier portal.

ARTICLE V- ADDITIONAL PROVISIONS

- E. **Audit and Other Oversight.** It is agreed that the Contractor will abide by all provisions of City Code Section 2-1120, including but not limited to City Code Section 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. In signing this contract, the Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

- F. **Compliance with City's Hiring Requirements — Ban the Box.**

1. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
2. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation,

is a material breach of this Agreement. Upon learning of such breach, the City will provide the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable, and the remaining provisions of the Agreement will remain in full force and effect.
4. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

G. Ownership Interest Disclosure. The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.

H. Subcontractor Reporting. The Contractor shall provide a list of all persons, natural or artificial, who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. In regard to any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining said subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required lists and notices are submitted.

I. Employee Verification. The Contractor swears that: (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of three (3) years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs

incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide the requested affidavit or violates any provision of this paragraph.

ARTICLE VI - NON-DISCRIMINATION

- A. Equal Employment Opportunity.** In all hiring or employment made possible by or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.
- B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of the Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state, and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.
- C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.
- D. Termination for Breach.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE VII - 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 the 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. **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.

5. **Non-Solicitation Statement.** The Contractor swears that it has not employed nor 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 nor 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.

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

7. **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.

8. **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]

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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

for

Executed on this 17th of January, 2023

FORM AND LEGALITY APPROVED:

Law Department

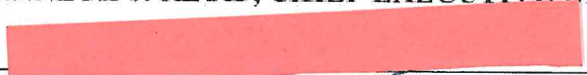
By: 

Printed Name: Tracy Tyle

RETIF OIL & FUEL, L.L.C.

BY: 

KENNETH J. RETIF, CHIEF EXECUTIVE OFFICER


FEDERAL TAX I.D.