

K23-042

AMENDMENT NO. 1 TO BID CONTRACT

BETWEEN

THE CITY OF NEW ORLEANS

AND

TRUCKING INNOVATION, LLC

BID PROPOSAL NO. 310

SUPPLEMENTAL EQUIPMENT FOR SPECIAL EVENTS – TANDEM DUMP TRUCKS

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and **TRUCKING INNOVATION, LLC**, represented by Otis R. Tucker, Jr., Senior Manager (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of **February 10, 2023** (the “**Effective Date**”).

RECITALS

WHEREAS, the City issued an Invitation to Bid No. 310 on November 14, 2019, and Addendum No. 1 on December 5, 2019, soliciting bids to obtain a requirements(s) contract for Supplemental Equipment – Tandem Dump Trucks (the “**ITB**”);

WHEREAS, on and effective February 10, 2020, the City and the Contractor entered into a bid contractor for supplemental equipment for special events-tandem dump trucks with an initial term of three (3) years (the “**Contract**”);

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term of the Contractor for the first of three (3) one-year extensions, to reaffirm the price provide supplemental equipment for special events – tandem dump trucks to the City.

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

1. Extension. In accordance with the right provided for within Section 13 of Attachment “B” to the Contract, which allows the Parties to extend the term for no more than three (3) additional one-year terms, the term is extended for one (1) year from the Effective Date through February 9, 2024.

2. Price/Compensation. The City and the Contractor reaffirm the Contractor’s price proposal submitted in response to the City’s ITB No. 3010.

3. Living Wages. Section 23 of Attachment “B” to the Contract is deleted in its entirety and replaced, as follows:

LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Contract 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 Contract, 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 Contract 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 Contract, said failure may result in termination of the Contract 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.

4. Non-Discrimination. Section 16 of Attachment “B” to the Contract is deleted in its entirety and replaced, as follows:

NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Contract, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Contract, 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 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 those provisions.

D. The City may terminate this Contract for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Contract.

5. Additional Miscellaneous Provisions. The following terms and conditions are reaffirmed and/or added to the Contract:

ARTICLE I – THE CONTRACTOR’S OBLIGATIONS

The Contractor will perform all obligations of the Contractor and be subject to all terms and conditions set forth, in this Contract and in the following documents that are incorporated fully into this Contract: the ITB and the Contractor's Bid dated December 10, 2019.

ARTICLE II – THE CITY’S OBLIGATIONS

The City will pay the Contractor at the rate set forth in the Contractor's Bid for the satisfactory performance of this Contract and will perform all obligations of the City and be subject to all terms and conditions set forth, in this Contract and any incorporated documents.

ARTICLE III - THE SURETY’S OBLIGATIONS

A. Performance Bonds. **THE GRAY CASUALTY & SURETY COMPANY** (the “Surety”) intervenes in this Contract and binds itself as surety for:

1. The faithful performance of all work required of the Contractor by this Contract in the full sum of **\$30,000.00**.

B. Acknowledgement of Contract. The Surety represents and warrants that it has fully read and understands the terms of this Contract, including all incorporated documents.

C. Survival and Validity of Bonds. The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall be become null and void if the Contractor: (1) well and faithfully performs all and singular the obligations assumed by the Contractor in this Contract; (2) fully

secures and protects the City, its legal successors and representatives, from all loss or expense of any kind, including premises, including all costs of Court and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (3) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses. The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the manner and mode of payment.

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 Contract, 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 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 City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Contract.

B. **Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Consultant 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 Contract 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 Contract for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Contract, 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 Contract, 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 Contract will be unaffected by any suspension or termination.

6. **Convicted Felon Statement.** The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding

five 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. **Non-Waiver.** The failure of either Party to insist upon strict compliance with any provision of this Contract, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other Party at such time as the initial discovery of the existence of such noncompliance, right, default, or breach shall not affect or constitute a waiver of either Party's right to insist upon such compliance, exercise such right, or seek such remedy with respect to that default or breach, or any prior, contemporaneous, or subsequent default or breach.

9. **Entire Agreement.** This Contract, including all incorporated documents, constitutes the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Contract and are without effect to vary or alter any terms or conditions of this Contract.

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

11. **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.

12. **Compliance with the City's Hiring Requirement – Ban the Box.** (i) 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 Contract, 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. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Contract, or to provide sufficient written reasons for deviation, is a material breach of this Contract. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow 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 Contractor, void the Contract, or take any such legal action permitted by law or this Contract. (iii) This section will not apply to any Contracts 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 Contract will remain in full force and effect. (iv) 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 those provisions.

13. **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor contracts, and grants," to the maximum

extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

14. *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.

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[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: [Signature]
LATOYA CANTRELL, MAYOR

Executed on this 8th of February, 2023.

FORM AND LEGALITY APPROVED:

Law Department

By: [Signature]

Printed Name: Tracy Tyle

TRUCKING INNOVATION LLC

BY: [Signature]
OTIS R. TUCKER, JR., SENIOR MANAGER

TAX I.D.

THE GRAY CASUALTY & SURETY COMPANY

BY: [Signature]
AGENT

OR ATTORNEY-IN-FACT

PRINT NAME, TITLE: KATHRYN MOORE, ATTORNEY-IN-FACT

TAX I.D.

[PERFORMANCE BOND AND ORIGINAL POWER OF ATTORNEY
MUST BE ATTACHED TO THIS AMENDMENT]

***IT IS UNDERSTOOD AND AGREED THE BOND OBLIGATION IS FOR THE TERM BEGINNING FEBRUARY 10, 2023 AND
ENDING FEBRUARY 9, 2024.

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: GS50000065

Principal: TRUCKING INNOVATION, LLC

Project: BID PROPOSAL NO. 310 SUPPLEMENTAL EQUIPMENT FOR SPECIAL EVENTS - TANDEM DUMP TRUCKS

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Ralph J. LeBlanc, Alexander J. Ellsworth, Charles F. Cowand, Anthony Currera, Kathryn Moore, and Norma Touns of Metairie, Louisiana jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED, that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray
President
The Gray Insurance Company

Cullen S. Piske
President
The Gray Casualty & Surety Company



State of Louisiana

ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 10TH day of FEBRUARY, 2023.

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 10TH day of FEBRUARY, 2023.

