

K20-982

**BID CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
MDL ENTERPRISES, LLC**

**BID PROPOSAL NO. 709
SUPPLEMENTAL EQUIPMENT FOR SPECIAL EVENTS – STREET SWEEPERS AND
FLUSHERS**

THIS CONTRACT (the “Contract”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”) and MDL Enterprises, LLC, represented by Michael D. Lee, Owner (the “Contractor”). The City and the Contractor are sometimes each referred to as a “Party” or collectively as the “Parties.” The Contract is effective as of the date of execution by the City (the “Effective Date”).

RECITALS

WHEREAS, the City issued an Invitation to Bid No. 709 on July 21, 2020 and Addendum No. 1 on July 27, 2020, soliciting bids to obtain a requirement(s) contract for Supplemental Equipment for Special Events – Street Sweepers and Flushers (the “ITB”); and

WHEREAS, the Contractor submitted the lowest responsive bid in response to the ITB and the City desires to award the Contract to the Contractor.

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to provide Supplemental Equipment for Special Events – Street Sweepers and Flushers to the City under the ITB, and the City and the Contractor, for good and valuable consideration, agree as follows:

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 August 5, 2020 (the “Bid”).

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.

Total Hourly Rate for Street Sweeper and Flusher with Operator	
One (1) Sweeper and Operator	\$245.00 per hour

One (1) Flusher and Operator	\$225.00 per hour
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III. THE SURETY'S OBLIGATIONS

A. Performance Bond. *Old Republic Insurance Company*, (the "Surety") intervenes in this Contract and binds itself as surety for the faithful performance of all work required of the Contractor by this Contract in the full sum of \$100,000.

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 Bond. The Surety's bond shall remain in full force and effect, and shall survive the termination of this Contract, but shall 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) promptly pays all wages of laborers, workmen, or mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any sub-contractors; or furnished to sub-contractors, and used in the construction, erection, alteration, performance or repairs of the work required by the Contract; (3) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, for the use in machines used in the construction, erection, alteration, performance or repair of the work required by the Contract; (4) fully secures and protects the City, its legal successor 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 (5) 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.

IV. ADDITIONAL PROVISIONS

A. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member or officer of the Contractor has, within the preceding 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.

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

C. 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 of subsequent default or breach.

D. Entire Contract. 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.

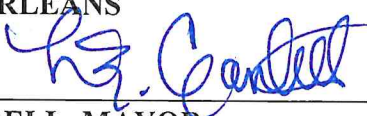
E. Electronic Signature and Delivery. The Parties agree that a manually signed copy of this Contract and any other documents(s) attached to this Contract delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original copy of this Contract. 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 Contract.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

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

CITY OF NEW ORLEANS

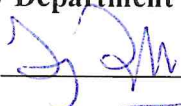
BY: 

LATOYA CANTRELL, MAYOR

Executed on this 9TH of NOVEMBER, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Traut Tyler

MDL ENTERPRISES, LLC

BY: 

MICHAEL D. LEE, OWNER


TAX I.D.

OLD REPUBLIC INSURANCE COMPANY

BY: 

AGENT OR ATTORNEY-IN-FACT



PRINTED NAME: Laura D. Mosholder, Attorney-In-Fact

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



NIELSON, WOJTOWICZ, NEU & ASSOCIATES

A NIELSON HOOVER GROUP COMPANY

October 23, 2020

MDL Enterprises, LLC
PO BOX 1071
Marrero, LA 70073

RE: City of New Orleans, as Obligee
Project: BID PROPOSAL NO. 709 SUPPLEMENTAL EQUIPMENT FOR SPECIAL
EVENTS - STREET SWEEPERS AND FLUSHERS
Bond No. SBA5932644

Dear Ladies and Gentlemen:

Please supply us with the following information for the above captioned final bond:

Executed Contract with Date: X _____

This letter is also giving MDL Enterprises, LLC as Principal and/or City of New Orleans, as Obligee, the authority to complete these bonds by dating the bonds with the contract date, execution and Power of Attorney dates. **The contract date MAY BE THE SAME date as the execution of the bond or PRIOR to the execution date of the bonds.**

We will forward this information onto your surety company upon our receipt. Please return as soon as possible.

Thank you for your cooperation.

Sincerely,
Old Republic Insurance Company

Laura D. Mosholder
Attorney-in-Fact



Bond No. SBA5932644

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

MDL Enterprises, LLC
PO BOX 1071
Marrero, LA 70073

OWNER:

(Name, legal status and address)

City of New Orleans
1300 Perdido St, Room No. 4W07
New Orleans, LA 70112

CONSTRUCTION CONTRACT

Date:

Amount: \$ 100,000.00 One Hundred Thousand Dollars and 00/100

Description:

(Name and location)

BID PROPOSAL NO. 709 SUPPLEMENTAL EQUIPMENT FOR SPECIAL EVENTS - STREET SWEEPERS AND FLUSHERS

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$ 100,000.00 One Hundred Thousand Dollars and 00/100

Modifications to this Bond:

☒ None

☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

MDL Enterprises, LLC

Signature:

Name

and Title:

Michael A. Lee
Michael A. Lee
Owner

SURETY

Company:

(Corporate Seal)

Old Republic Insurance Company

Signature:

Name

and Title:

Laura D. Mosholder
Laura D. Mosholder

Attorney-in-Fact



This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Nielson, Wojtowicz, Neu & Associates
1000 Central Avenue, Suite 200
St. Petersburg, FL 33705
800-965-9597

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

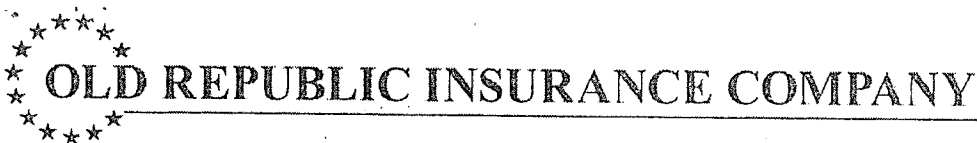
Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania stock insurance corporation, does make, constitute and appoint:

in Richard Wojtowicz, John R. Neu, Tracey C. Brown-Boone, Daniel Oaks,

Jessica Reno, Laura D. Mosholder of St. Petersburg, FL

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC INSURANCE COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on December 10, 2019. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC INSURANCE COMPANY on December 10, 2019.

RESOLVED FURTHER, that the chairman, president or any vice president of the Company's surety division, in conjunction with the secretary or any assistant secretary of the Company, be and hereby are authorized and directed to execute and deliver, to such persons as such officers of the Company may deem appropriate, Powers of Attorney in the form presented to and attached to the minutes of this meeting, authorizing such persons to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and not guaranty bonds. The said officers may revoke any Power of Attorney previously granted to any such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by chairmen, president or any vice president of the Company's surety division and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
- (ii) when signed by a duly authorized Attorney-in-Fact and sealed with the seal of the Company (if a seal be required).

RESOLVED FURTHER, that the signature of any officer designated above, and the seal of the Company, may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC INSURANCE COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 27th day of March, 2020

OLD REPUBLIC INSURANCE COMPANY


Assistant Secretary

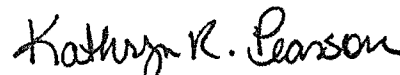



Vice President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 27th day of March, 2020, personally came before me, Alan Pavlic and Sheila M. Applegate, to me known to be the individuals and officers of the OLD REPUBLIC INSURANCE COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said organization.




Notary Public

My Commission Expires: September 28, 2022

CERTIFICATE

(Expiration of notary's commission does not invalidate this instrument)

I, the undersigned, assistant secretary of the OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.



92 2280

Signed and sealed at the City of Brookfield, WI this _____ day of _____

ORSC 11008 (6-93)

NIELSON, WOJTOWICZ AND ASSOC




Assistant Secretary