

K21-1121

**AMENDMENT NO. 2 TO REQUIREMENTS MAINTENANCE CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
H & O INVESTMENTS, LLC
MEDIAN AND PLAYGROUND TURF MAINTENANCE MOWING SERVICES
BID PROPOSAL NO. 116**

THIS SECOND AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and H & O Investments, LLC, represented by David C. Mahler, Jr., Owner (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, the City and the Contractor are parties to a requirements contract dated January 17, 2020, for the Contractor to provide median and playground turf maintenance services (the “**Agreement**”);

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term of the Agreement for an additional year for continuity of services.

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

- 1) **Extension**. The term of the Agreement is extended for an additional one year from January 17, 2022 through January 16, 2023.
- 2) **Price**. The City and Contractor reaffirm the price proposal submitted by the Contractor in response to the City’s Invitation to Bid N. 116.
- 3) **Living Wage**. The following provisions for Living Wage will be added to the Agreement as Article VII:

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.

A. **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.

B. **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

C. **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.

D. 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.

- 4) **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, 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.
- 5) **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.
- 6) **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.
- 7) **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
- 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 pages]

[Remainder of page intentionally left blank]

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

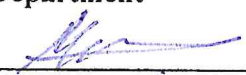
CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL,
MAYOR

Executed on this 11 day of January, 2021.

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Andrew Gregorich

H & O INVESTMENTS, LLC

BY: 

DAVID C. MAHLER, JR.,
MEMBER

FEDERAL TAX I.D. 