

K20-847

AMENDMENT NO. 6 TO THE REQUIREMENTS CONTRACT

BETWEEN

THE CITY OF NEW ORLEANS

BOND No. 190029118

AND

CERES ENVIRONMENTAL SERVICES, INC

**ITB 3010-01495: DISASTER STREET CLEARING AND DEBRIS COLLECTION,
REMOVAL, PROCESSING, AND DISPOSAL - ZONE 1**

THIS SIXTH AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Ceres Environmental Services, Inc, represented by Tia Laurie, Corporate Secretary (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties.**” The Amendment is effective as of August 28, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, on and effective August 28, 2013, the City and the Contractor entered into a requirements contract for Disaster Street Clearing and Debris Collection, Removal, Processing, and Disposal in Zone 1 (the “**Contract**”) pursuant to the City’s Invitation to Bid No. 3010-01495, issued June 20, 2013 (the “**ITB**”);

WHEREAS, the Contract provided for an initial term of three (3) years from the Effective Date with the ability to extend the term for no more than three (3) one (1) year periods;

WHEREAS, on June 8, 2016, effective August 28, 2016, the Parties entered into an amendment to extend the term for one (1) year through August 27, 2017 (“**Amendment No. 1**”);

WHEREAS, on August 24, 2017, effective August 28, 2017, the Parties entered into an amendment to extend the term for one (1) year through August 27, 2018 (“**Amendment No. 2**”);

WHEREAS, on August 22, 2018, effective August 28, 2018, the Parties entered into an amendment to extend the term for one (1) year through August 27, 2019 (“**Amendment No. 3**”);

WHEREAS, effective August 28, 2019, the Parties entered into an amendment to extend the term for four (4) months through December 27, 2019 (“**Amendment No. 4**”);

WHEREAS, effective December 28, 2019, the Parties entered into an amendment to extend the term for eight (8) months through August 27, 2020. (“**Amendment No. 5**”); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter into this Amendment to extend the term for four (4) months through December 27, 2020.

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

1. Extension. The Contract term is extended for an additional four (4) months from the Effective Date through December 27, 2020.

2. **Rate of Compensation.** The City and the Contractor reaffirm the hourly rates of compensation set forth in the Contractor's Bid dated July 30, 2013, submitted in response to the City ITB (the "Contractor's Bid").

3. **Maximum Amount.** The maximum amount payable for all services performed under this Contract and the amendments, *in globo*, remains at \$4,976,613.50 in the aggregate at any time, in accordance with the Contractor's Bid. As a requirements contract, the Contract is price-protected and not binding as to any specific quantity.

4. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Contract:

THE SURETY'S OBLIGATIONS

A. **Performance Bond.** Liberty Mutual 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 \$4,976,613.50.

B. **Performance and Payment Bonds.** 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 amount of \$4,976,613.50.
2. The full payment by the Contractor of all payments to be made by the Contractor under this Amendment in the full sum of \$4,976,613.50.

Each of these bonds is considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

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

D. **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 of 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.

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.

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. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Contract. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of 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.

5. 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."

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

9. 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.

10. Special Compliance Provisions for FEMA-Funded Contracts. The "Special Compliance Provisions for FEMA- Funded Contracts," attached as Exhibit "A" to this Contract, as amended, are expressly incorporated in the Contract and will be effective, notwithstanding any provision of the Contract or any incorporated documents, to the contrary, upon the City's notice to the Contractor that the City may, at the City's discretion, seek reimbursement from FEMA in connection with the work to be performed under this Contract, as amended.

[SIGNATURES AND EXHIBIT "A" CONTAINED ON NEXT PAGE(S)]

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

CITY OF NEW ORLEANS

BY: *L. Cantrell*

LATOYA CANTRELL, MAYOR

Executed on this 27TH of August, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: *[Signature]*

Printed Name: Andrew Gregorian

CERES ENVIRONMENTAL SERVICES, INC

BY: *Tia Laurie*

TIA LAURIE, CORPORATE SECRETARY



Seal No. 5520

LIBERTY MUTUAL INSURANCE COMPANY

BY: *Ted Jorgensen*

AGENT OR ATTORNEY-IN-FACT

PRINT NAME: Ted Jorgensen, Attorney-in-Fact

[PERFORMANCE BOND, PAYMENT BOND, POWER OF ATTORNEY, AND
EXHIBIT "A" MUST BE ATTACHED TO THIS AMENDMENT]

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EXHIBIT "A"

SPECIAL COMPLIANCE PROVISIONS FOR FEMA – FUNDED CONTRACTS

The Contractor is advised that this Contract may be funded by FEMA. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

A. TERMINATION FOR CAUSE: The City and the Contractor shall each have the right to terminate this Agreement 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 Agreement 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 Management Agency, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement 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. **NOTICES:** Except as otherwise provided, this Agreement contains no requirements pertaining to reporting, patent rights, copyrights, or rights in data.

F. **DEBARMENT, SUSPENSION, AND INELIGIBILITY:** The Contractor represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

G. **REMEDIES AND SANCTIONS AGAINST CONTRACTOR'S DEFAULT:** The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Contractor breach or violation hereof.

[End of Amendment]



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8200451-190054**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Colby D. White, Melinda C. Blodgett, R. C. Bowman, Tina L. Domask, R. Scott Egginton, Sandra M. Engstrom, R. W. Frank, Ted Jorgensen, Joshua R. Loftis, Kurt C. Lundblad, Brian J. Oestreich, Jerome T. Ouimet, Ross S. Squires, Nicole Stillings, John E. Tauer, Rachel Thomas, Lin Ulven, Emily White

all of the city of Minneapolis state of Minnesota each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 4th day of February, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 4th day of February, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of August, 2020.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary