

K21-650

AMENDMENT NO. 1 TO PROFESSIONAL SERVICE 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 FIRST 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, 2020 (the “Effective Date”).

RECITALS

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

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to renew the agreement.

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 of the Agreement, the term is extended for an additional Two (2) years from the Effective Date through January 31, 2022.

1. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

DECLARED DISASTER

A. **Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. **Task Order. Notification and Personnel.** Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor’s support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City’s needs.

C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

LIVING WAGES

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. **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

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increased during the term of the Amendment. 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 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

G. **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.

H. **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.

ARTICLE IX – HIRENOLA PROGRAM

The Contractor agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Contractor fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

2. **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.

3. **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.

4. **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.

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

6. **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.

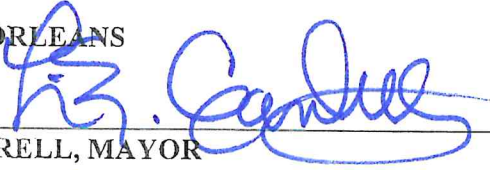
7. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original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

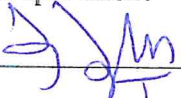
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 28th of June, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

RETIF OIL & FUEL, L.L.C.

BY: 
KENNETH J. RETIF, CHIEF EXECUTIVE OFFIER


FEDERAL TAX I.D.