

AMENDMENT NO. 2 TO THE REQUIREMENTS CONTRACT**BETWEEN****CITY OF NEW ORLEANS****AND****KELLERMEYER BERGENSONS SERVICES, LLC (ASSIGNMENT FROM EMPIRE
JANITORIAL SALES & SERVICES, LLC)****BID PROPOSAL NO.: 3010-01748****FRENCH QUARTER AND DOWNTOWN DEVELOPMENT DISTRICT SANITATION
SERVICES**

THIS SECOND AMENDMENT (the "Amendment" or "Amendment No. 2") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Kellermeyer Bergensons Services, LLC, represented by Charlie Lusco, President/Owner (the "Contractor"). The City and the Contractor are sometimes collectively referred to as "Parties". The Amendment is effective as of January 1, 2021 (the "Effective Date").

RECITALS

WHEREAS, on and effective December 23, 2014, the City and the Contractor entered into a requirements contract to provide the French Quarter and Downtown Development District Sanitation Services to the City (the "Contract") pursuant to the City's Invitation to Bid No. 3010-01748, issued November 19, 2014 (the "ITB");

WHEREAS, the Contract provided for an initial term of Seven (7) years from the Effective Date with the ability to extend the term for no more than three (3) one (1) year periods;

WHEREAS, on October 9, 2019 and effective May 18, 2019, the City and the Contractor entered into an amendment to eliminate the curbside collection of plastic containers coded #3 through #7 and ferrous metal food containers ("Amendment No. 1"); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to amend the City's obligations in Section II of the Contract, as amended, and to modify and/or reaffirm the terms and conditions as set forth hereinunder.

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

1. **Term**. The Parties agree and acknowledge that the term of the Contract shall remain unchanged. In accordance with Section 10 and Section 12 of Attachment "B" to the ITB, the initial term of the Contract shall extend for seven (7) years from December 23, 2014 through December 22, 2021, and the Contract may be extended at the option of the City for three (3) additional one (1) year terms thereafter.

2. **Price**. The City and the Contractor reaffirm the rates of compensation set forth in the Contractor's Bid dated December 16, 2014, submitted in response to the City ITB (the "Contractor's Bid"). The monthly cost per unit for Solid Waste Collection is reaffirmed at

Amendment No. 2 to the Requirements Contract between
The City of New Orleans and Empire Janitorial Sales & Services, LLC
ITB No. 3010-01748; French Quarter and Downtown Development District Sanitation Services
K21-275; 2393

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(Residential - \$21.10), (Commercial - \$52.00), and (Residential & Commercial - \$52.00). The monthly cost per unit for Recycling Collection is reaffirmed at (Residential, Commercial, and DDD - \$2.27).

3. **Maximum Amount.** Section 3 of Amendment No. 1 is deleted in its entirety and replaced, as follows:

3. **Maximum Amount.** The maximum aggregate amount payable by the City under this Contract is increased by \$3,953,577.00 to a maximum aggregate amount not to exceed \$27,675,039 through December 31, 2021.

4. **Non-Discrimination.** Section 16 of the Attachment B" of the ITB is deleted in its entirety and replaced as follows:

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 Contract.
4. **Bonds.** The Contractor's obligation to maintain performance bonds acceptable to the City during the life of the Contract, as amended, is reaffirmed, as set forth in Section 14 of Attachment "A" of the ITB.
5. **Invoicing.** Section 6 of Attachment "A" to the ITB is deleted in its entirety and replaced, as follows:
- 6. Contractor shall invoice the City within ten (10) calendar days following the end of each month for services rendered that month.
6. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Contract:

III - THE SURETY'S OBLIGATIONS

A. **The Performance and Payment Bonds.** Travelers Casualty and Surety Company of America ("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 One Million Nine Hundred Seventy-Six Thousand Seven Hundred Eighty-Eight Dollars and Fifty Cents (\$1,976,788.50).
- 2. The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the fully sum of One Million Nine Hundred Seventy-Six Thousand Seven Hundred Eighty-Eight Dollars and Fifty Cents (\$1,976,788.50).

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

B. **Acknowledgment 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 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) promptly pays all wages of laborers, workmen, and mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any subcontractors; or furnished to subcontractors, 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, and used in, or for 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 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 (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.

V - 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 Contract; 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 Contract, 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 Contract 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.

VI - 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 Contract (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.

VII - COMPLIANCE WITH CITY'S HIRING REQUIREMENTS-

BAN THE BOX

A. 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.

B. 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.

C. 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.

D. 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.

VIII - ADDITIONAL PROVISIONS

7. Ownership Interest Disclosure. The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

8. Subcontractor Reporting. The Contractor shall provide a list of all persons, natural or artificial, who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the city. In regard to any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the City, the Contractor must provide notice to the City within 30 days of retaining said subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

9. Employee Verification. The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Contract, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. The Contractor acknowledges and agrees that any violation of the provisions of this paragraph may subject this Contract to cancellation and may further result in the Contractor

being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Contract or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Contract.

10. **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.

11. **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.

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

13. **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.

14. **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."

15. **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, the Contractor, and the Surety through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: [Signature]
LATOYA CANTRELL, MAYOR

Executed on this 2ND of June, 2021.

FORM AND LEGALITY APPROVED:

Law Department

By: [Signature]

Printed Name: Tracy Tule

NEW NAME

BY: [Signature]
CHARLIE LUSCO, PRESIDENT

TAX I.D.

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

BY: _____
SURETY REPRESENTATIVE, AGENT OR ATTORNEY-IN-FACT

PRINT NAME, TITLE: _____

TAX I.D. _____

[ORIGINAL POWER OF ATTORNEY AND THE PERFORMANCE AND PAYMENT
BONDS MUST BE ATTACHED TO THIS AMENDMENT.]

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

CITY OF NEW ORLEANS

BY: [Signature]
LATOYA CANTRELL, MAYOR

Executed on this 2nd of June, 2021.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

NEW NAME

BY: _____
CHARLIE LUSCO, PRESIDENT

TAX I.D.

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

BY: [Signature]
SURETY REPRESENTATIVE, AGENT OR ATTORNEY-IN-FACT

PRINT NAME, TITLE: Derek J. Elston, Attorney-in-Fact

TAX I.D.

[ORIGINAL POWER OF ATTORNEY AND THE PERFORMANCE AND PAYMENT
BONDS MUST BE ATTACHED TO THIS AMENDMENT.]



Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Derek J. Elston** of **Chicago, Illinois**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

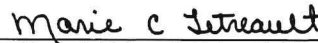
By: 
 Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed 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 hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




 Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

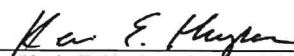
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 17th day of May, 2021




 Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

ACKNOWLEDGEMENT BY SURETY

STATE OF ILLINOIS
COUNTY OF COOK

On this 17th day of May, 2021, before me, Bartlomiej Siepierski, a Notary Public, within and for said County and State, personally appeared Derek J. Elston to me personally known to be the Attorney-in-Fact of and for Travelers Casualty and Surety Company of America and acknowledged that s/he executed the said instrument as the free act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.



Notary Public in the State of Illinois
County of Select County