

K20-734

BOND NO. 30104102

REQUIREMENTS BID CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
DIAMOND ELECTRICAL COMPANY, INC.
TRAFFIC SIGNAL MAINTENANCE SERVICES
BID PROPOSAL NO. 618

THIS CONTRACT (the “**Contract**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”) and Diamond Electrical Company, Inc., represented by Chad R. Scallan, Vice – President (the “**Contractor**”). The City and the Contractor may sometimes be referred to as the “**Parties**”. This Contract is effective as of September 9, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, the City issued an Invitation to Bid No. 618 on June 3, 2020 and its Addendum No. 1 dated June 19, 2020 (collectively, the “**ITB**”) seeking a contractor to provide traffic signal maintenance services on an as-needed basis at the City’s request, as provided in the ITB;

WHEREAS, the Contractor submitted the lowest responsive and responsible bid in response to the City’s ITB, and the City desires to award the Contract to the Contractor; and

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to provide traffic signal maintenance services at the City’s request in accordance with 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 Contract, and be subject to all terms and conditions set forth, in the Contract and in the following documents that are incorporated fully into this Contract by reference: the ITB; the Contractor’s Bid dated June 24, 2020 (the “**Contractor’s Bid**”); all documents, drawings, and specifications incorporated or referenced in the ITB and/or the Contractor’s Bid, including, but not limited to, any and all terms, conditions, documents, drawings, and/or specifications contained in the City’s General Contract Terms and Conditions, and the City’s General Specifications for Street Paving (2015 ed.).

II. THE CITY'S OBLIGATIONS

The City will pay the Contractor at the rates 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.

III. COMPENSATION

This is a requirements contract and does not guarantee any specific quantity or work or amount of compensation. The City will issue task orders to the Contractor as needed and will pay the Contractor in accordance with the rates submitted in the Contractor's Bid Form dated June 24, 2020.

IV. CONTRACT DURATION

A. **Initial Duration.** The initial term of this Contract is one (1) year from September 9, 2020 through September 8, 2021.

B. **Extension.** This Contract may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Agreement facilitates continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than four (4) one-year periods.

V. THE SURETY'S OBLIGATIONS

A. **Performance and Payment Bonds.** Western Surety Company (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 full sum of \$3,074,086.50; and
2. The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of \$3,074,086.50.

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 obligations of the Surety under the other.

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 Bonds.** The Surety's bonds 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 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 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, 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 expenses 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 payment.

VI. 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, 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 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 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 the 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 or subsequent default or breach.

D. Entire Agreement. 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 effect to vary or alter any terms or conditions of this Contract.

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

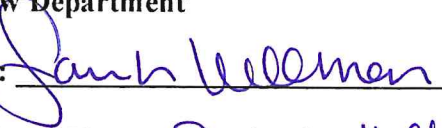
THE CITY OF NEW ORLEANS

BY: 

**LATOYA CANTRELL,
MAYOR**

Executed on this 11th of August, 2020.

FORM AND LEGALITY APPROVED:
Law Department

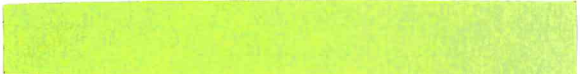
By: 

Printed Name: Sarah Wellman

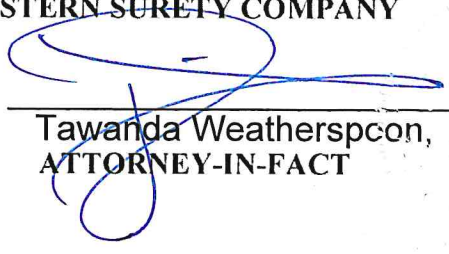
DIAMOND ELECTRICAL COMPANY, INC.

BY: 

**CHAD R. SCALLAN,
VICE – PRESIDENT**

FEDERAL 

WESTERN SURETY COMPANY

BY: 

**Tawanda Weatherspcon,
ATTORNEY-IN-FACT**

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

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Charlotte L Wright, Markham R Mc Knight, Charles E Reagin III, Thomas M Sandahl, Randall K Bonaventure, P Dwayne David, Wendy Arcement, Brenda G Ortego, Trent J Sandahl, Linda Sue Ray, Tawanda Weatherspoon, Stephanie S McKnight, William G McKnight, Kadie C Crawford, Mary E Rhodes, Individually, Baton Rouge, LA
Steven P Thibodeaux, Roberta H Fusilier, Individually, of Lake Charles, LA**

its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 23rd day of July, 2019.



WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 23rd day of July, 2019, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 9th day of September, 2020.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary