

THIRD AMENDMENT TO CONTRACT**BETWEEN****THE CITY OF NEW ORLEANS****AND****SIEMENS INDUSTRY, INC.****ITB 4511-02185****HVAC PREVENTATIVE MAINTENANCE SERVICES**

THIS THIRD AMENDMENT is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Siemens Industry, Inc., represented by Matthew Hashenberger, Branch General Manager (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of September 21, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, on September 21, 2017, the City and the Contractor entered into a contract for HVAC preventative maintenance services as requested in Invitation to Bid No. 4511-02185 (**The Agreement**);

WHEREAS, on September 21, 2018, the City and the Contractor entered into Amendment No. 1 to expand the scope of services, amend the compensation, and extend the term of the agreement to September 20, 2019; and

WHEREAS, on September 21, 2019, the City and the Contractor entered into Amendment No. 2 to extend the term of the agreement to September 20, 2020; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to amend the pricing, and 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.** In accordance with Attachment “B”, Section 17 of the ITB as incorporated in the agreement; the term is extended for an additional one year from the Effective Date through September 20, 2021.

2. **Price.** The City and Contractor reaffirm the price proposal submitted by the Contractor in response to the City’s Invitation to Bid No. 4511-02185 as amended by amendment No 1.

3. **Amended Services.** This Agreement shall be amended as follows: Attachment “C” shall be deleted and replaced with updated “C-1” Attachment.

4. **Additional Miscellaneous Provisions.**

A. **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 Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, 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 Agreement, or to provide sufficient written reasons for deviation is a material breach of this Agreement. Upon learning of such breach, the City will provide the Contractor notice of non-compliance and allow thirty (30) days come into compliance. If after providing notice and thirty (30) days to cure, the Contractor remains non-compliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
- c. This section will not apply to any agreements 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 Agreement 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 sub-contractors to comply with those provisions.

B. Invoices.

- a. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:
 - i. Name of Contractor;
 - ii. Date of Invoice;
 - iii. Invoice Number;
 - iv. Contract or Purchase Order Number issued by the City (i.e. K#);
 - v. Name of the City Department to be invoiced (i.e. City Civil Service);
 - vi. Description of the Services completed;
 - vii. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.
- b. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

- C. Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

- D. 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.

E. 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:
 - i. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
 - ii. 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
 - iii. 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 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 (iii) 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.
4. 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.
5. 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.
6. Prior Terms Binding. Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
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.

[The remainder of this page is intentionally left blank]

[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

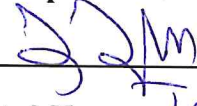
BY: 

LATOYA CANTRELL, MAYOR

Executed on this 16TH of April, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

SIEMENS INDUSTRY, INC.

BY: Hashenberger Matthew

Digitally signed by Hashenberger Matthew
Date: 2021.03.30 13:30:54 -05'00'

MATTHEW HASHENBERGER, BRANCH GENERAL MANAGER


FEDERAL TAX I.D.