

K23-441

AMENDMENT NO. 2 TO CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
CERES ENVIRONMENTAL SERVICES, INC
BID PROPOSAL NO.: 1158

DISASTER STREET CLEARING AND DEBRIS COLLECTION, REMOVAL,
PROCESSING, AND DISPOSAL SERVICES - ZONE 1

THIS SECOND 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 June 29, 2023 (the "Effective Date").

RECITALS

WHEREAS, on March 31, 2021, the City issued an Invitation to Bid No. 1158 and Addendum No. 1 dated March 31, 2021, Addendum No. 2 dated April 15, 2021, and Addendum No. 3 dated April 26, 2021, seeking a contractor to provide disaster street clearing and debris collection, removal, processing, and disposal services in Zone 1 (the "ITB");

WHEREAS, on and effective June 29, 2021, 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 ITB (the "ITB");

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

WHEREAS, on July 28, 2022, and effective June 29, 2022, the City and the Contractor entered into an amendment to extend the term for an additional one (1) year through June 29, 2023, and to reaffirm, modify, and/or add certain terms and conditions ("Amendment No. 1");

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter into this Amendment to extend the term for one (1) additional year through June 28, 2024, and to reaffirm, modify, and/or add certain terms and conditions;

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 one (1) year from the Effective Date through June 28, 2024.
2. Rate of Compensation. The City and the Contractor reaffirm the hourly rates of compensation set forth in the Contractor's Bid dated May 5, 2021, which were included in the Bid Form "C" dated April 27, 2021, which is attached hereto and fully incorporated into this Amendment as Exhibit "B" (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 \$4,207,444.15 in the aggregate at any time, in accordance with the Contractor's Bid. To date, the City has paid the Contractor \$2,642,273. The City will be able to pay the Contractor an amount not to exceed \$1,565,171.15 under this Amendment. Further, 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:

ARTICLE III - THE SURETY'S OBLIGATIONS

A. **Performance and Payment Bonds.** Liberty Mutual Insurance 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 \$4,207,444.15.
2. The full payment by the Contractor of all payments to be made by the Contractor under this Amendment in the full sum of \$4,207,444.15.
3. 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.

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 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.

5. **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

6. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Contract, but all of which, when taken together, shall constitute one and the same agreement.
7. **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."
8. **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.
9. **Exhibits.** The following exhibits will be attached and are incorporated into this Amendment: Exhibit "A" - the Power of Attorney and Copies of the Performance bond and Payment Bond and Exhibit "B" - Attachment "C" Bid Form; and Exhibit "C" - Federal Contract Clauses - Special Compliance Provisions for FEMA - Funded Contracts.
10. **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.
11. **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 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.
12. **Order of Documents.** In the event of any conflict between the provisions of this Contract any incorporated documents, the terms and conditions of the documents will apply in this order: Exhibit "C"; the Contract; Exhibit "A"; and Exhibit "B".
13. **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.
14. **Special Compliance Provisions for FEMA-Funded Contracts.** 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. The "Special Conditions for FEMA Compliance" shall be attached hereto as Exhibit "C" to this Contract and made a part hereof. The Special Conditions for FEMA Compliance (i.e., The Federal Contract Clauses) are expressly incorporated in the Contract and will be effective, notwithstanding any provision of the Contract or any incorporated documents, to the contrary.

[SIGNATURES AND EXHIBITS "A", "B", & "C" 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: [Signature]
LATOYA CANTRELL, MAYOR

Executed on this 5th of July, 2023.

FORM AND LEGALITY APPROVED:
Law Department

By: [Signature]

Printed Name: Tracy Tyle

CITY COUNCIL, CITY OF NEW ORLEANS

BY: [Signature]
JEAN-PAUL J. MORRELL, CITY COUNCIL PRESIDENT

CERES ENVIRONMENTAL SERVICES, INC

BY: [Signature]
TIA LAURIE, CORPORATE SECRETARY

LIBERTY MUTUAL INSURANCE COMPANY

BY: [Signature]
AGENT OR ATTORNEY-IN-FACT

PRINT NAME: Joshua R. Loftis, Attorney-in-Fact

[EXHIBITS "A", "B", & "C" MUST BE ATTACHED TO THIS AMENDMENT]

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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: **8207173 - 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, Brian J. Oestreich; C. White; Emily White; Joshua R. Loftis; Lin Ulven; Melinda C. Blodgett; Nathan Weaver; Nicole Stillings; R. C. Bowman; R. W. Frank; Rachel Thomas; Ross S. Squires; Sandra M. Engstrom; Ted Jorgensen; Tina L. Domask

all of the city of Minneapolis state of MN 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 24th day of January, 2022.



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

By:

David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 24th day of January, 2022 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 - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1128044
Member, Pennsylvania Association of Notaries

By:

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 13th day of June, 2023.



By:

Renee C. Llewellyn, Assistant Secretary