

AMENDMENT NO. 6 TO BID CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
LEVEL 3 COMMUNICATIONS, LLC DBA LUMEN

THIS SIXTH AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Level 3 Communications, LLC, represented by Stephen Arneson, Manager (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties**.” The Amendment is effective as of April 21, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the Contractor submitted a bid dated December 19, 2014 in response to the City’s Invitation to Bid for Proposal No. 2236-01751 issued on November 24, 2014 (the “**ITB**”), seeking a contractor to provide the City with Internet services;

WHEREAS, on and effective April 21, 2015, the City and the Contractor entered into a bid contract for Internet services (the “**Contract**”);

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 four (4) one (1) year periods;

WHEREAS, on November 2, 2016, effective April 21, 2016, the City and the Contractor entered into an amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions thereunder (“**Amendment No. 1**”);

WHEREAS, on April 25, 2018, effective April 21, 2017, the City and the Contractor entered into an amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions thereunder (“**Amendment No. 2**”);

WHEREAS, on August 20, 2018, effective April 21, 2018, the City and the Contractor entered into an amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions thereunder (“**Amendment No. 3**”);

WHEREAS, effective April 21, 2019, the City and the Contractor entered into an amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions thereunder (“**Amendment No. 4**”);

WHEREAS, effective April 21, 2020, the City and the Contractor entered into an amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions thereunder (“**Amendment No. 5**”); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term of the Contract for one (1) year and to modify and reaffirm the terms and conditions hereunder.

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

1. **Extension.** The term of the Contract is extended for an additional one (1) year from the Effective Date through April 20, 2022.
2. **Price.** The City and the Contractor reaffirm the price proposal submitted by the Contractor in response to the City's Invitation to Bid No. 2236-01751. This is a contract for a fixed price as per the ITB.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Contract:

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. **Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for 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.

FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Contract, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Contract.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Consultant stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Contract is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Contract for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Contract, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Consultant must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Contract, either immediately or after one or more periods of suspension, effective on notice to Consultant and without any further compensation due.

2. Notwithstanding Section C (1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Contract will be unaffected by any suspension or termination.

INVOICES

A. **Invoices.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Contract) to the City electronically, via its supplier portal, for goods or services provided under this Contract 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 the following information: contract or purchase order number issued by the City, the name of the city department to be invoiced, the services performed each month. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

PAYMENT

A. **Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Contract 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.

NON-DISCRIMINATION

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 this Contract.

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. 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."

6. 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.

7. 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.

8. 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 Contract.

9. 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.

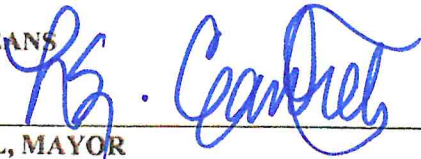
10. Compliance with the City's Hiring Requirements – Ban the Box. (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Contract, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) 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. (iii) 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. (iv) 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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

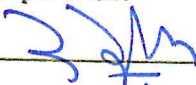
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 14 of March, 2022

FORM AND LEGALITY APPROVED:

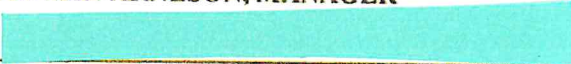
Law Department

By: 

Printed Name: Tracy Nyle

LEVEL 3 COMMUNICATIONS, LLC DBA LUMEN

BY: 
STEPHEN ARNESON, MANAGER


TAX I.D.

[END OF AMENDMENT]