

K20-670

AMENDMENT NO. 4 TO CONTRACT

BETWEEN

THE CITY OF NEW ORLEANS

AND

HERC RENTALS, INC.

THIS FOURTH AMENDMENT (the “Amendment”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), and Herc Rentals, Inc., represented by Jason Oosterbeek, Vice President (the “Contractor”). The City and the Contractor are sometimes collectively referred to as the “Parties.” The Amendment is effective as of July 5, 2020 (the “Effective Date”).

RECITALS

WHEREAS, on July 5, 2016, the City and the Contractor entered into a contract for emergency heavy equipment rental (the “Agreement”);

WHEREAS, the City and Contractor have amended the Agreement three times to ensure continuity of services; and

WHEREAS, the City and the Contractor, each having the authority to do so, now desire to enter this Amendment to renew the Agreement, as amended, to ensure continuity of services.

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

1. **Extension.** In accordance with the Original Agreement, the term is extended for an additional one year from the Effective Date through July 4, 2021.
2. **Price.** The City and Contractor reaffirm the price proposal submitted by the Contractor in response to the City’s Invitation to Bid N. 2130-01992.
3. **Miscellaneous Additional Terms.** The following Terms and Conditions are added to the Agreement, as amended:

A. Invoices.

1. 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:
 - a. Name of Contractor;
 - b. Date of Invoice;
 - c. Invoice Number;
 - d. Contract or Purchase Order Number issued by the City (i.e. K#);
 - e. Name of the City Department to be invoiced (i.e. City Civil Service);
 - f. Description of the Services completed;
 - g. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.

2. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

B. **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.

C. **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.

4. **Ceiling Price/Maximum Compensation.** The Contractor has reviewed the scope of the Agreement and agrees that the total cost for materials and services provided during a declaration of emergency will not exceed \$500,000.00. Contractor understands that they exceed this ceiling at their own risk, and may not be compensated for amounts over the ceiling price without providing written justification and supporting documents for any amounts beyond the ceiling price.
5. **Special Conditions for FEMA Contracts.** The "Special Conditions for FEMA Compliance" attached as Exhibit "A" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Contractor that the City intends to seek reimbursement from the FEMA Program in connection with the work to be performed under this Agreement.
6. **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.
7. **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.
8. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
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.

[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 Amendment.

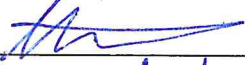
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 24th of August, 2020

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorian

HERC RENTALS, INC.

BY: 
JASON OOSTERBEEK, VICE PRESIDENT


FEDERAL TAX I.D.

[EXHIBIT A - SPECIAL CONDITIONS FOR FEMA COMPLIANCE CONTAINED
ON NEXT PAGES]

EXHIBIT A - SPECIAL CONDITIONS FOR FEMA COMPLIANCE

The Contractor is advised that this project may be funded by FEMA. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

A. **TERMINATION FOR CAUSE**: The City and the Contractor shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective 30 days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

B. **TERMINATION FOR CONVENIENCE**: The City shall have the right to terminate this Agreement without cause by giving the Contractor written notice of its intent to terminate at least 30 days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Contractor only for those Services performed up to and through the date of termination.

C. **RECORDS RETENTION AND ACCESS**: The Contractor shall grant the City, the State of Louisiana, the Federal Emergency Management Agency, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and shall retain all required records for five years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.

D. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**: As applicable, the Contractor shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

E. **DEBARMENT, SUSPENSION, AND INELIGIBILITY:** The Contractor represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

F. **REMEDIES AND SANCTIONS AGAINST CONSULTANT'S DEFAULT:** The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Contractor breach or violation hereof.

[END OF AGREEMENT]