

K20-581

AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

THE NEW ORLEANS RECREATION DEVELOPMENT COMMISSION

AND

VERMONT SYSTEMS, INC.

REQUEST FOR PROPOSALS NO.: 7003-01557

NORD RECREATION MANAGEMENT SOFTWARE AND TECHNICAL SUPPORT

THIS FIFTH AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), the New Orleans Recreation Development Commission, represented by Brian P. Egana, Chairman (“**NORD**”), and Vermont Systems, Inc., represented by David Wirtz, Director of Sales (“**VSI**” or the “**Contractor**”) This Amendment is effective as of January 1, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, on November 4, 2013, the City issued a Request for Proposals No, 7003-01557 seeking a qualified firm to provide certain professional services, including recreation management software and technical support (the “**RFP**”);

WHEREAS, on and effective August 19, 2014, the Parties entered into a professional Services Agreement to provide said services (the “**Agreement**”);

WHEREAS, the Agreement provided for an initial term of one (1) year from the Effective Date with the ability to extend the term for no more than five (5) one (1) year periods;

WHEREAS, on August 27, 2015, effective August 19, 2015, the Agreement was amended for the first time to extend the term for four (4) months and twelve (12) days, through December 31, 2015 and to increase the compensation due thereunder (“**Amendment No. 1**”);

WHEREAS, on December 20, 2016, effective January 1, 2016, the Agreement was amended for the second time to extend the term for two (2) additional years, through December 31, 2017 and to increase the compensation due thereunder (“**Amendment No. 2**”);

WHEREAS, on March 6, 2018, effective January 1, 2018, the Agreement was amended for the third time to extend the term for one (1) additional year, through December 31, 2018 and to increase the compensation due thereunder (“**Amendment No. 3**”);

WHEREAS, effective January 1, 2019, the Agreement was amended for the fourth time to extend the term for one (1) additional year, through December 31, 2019 and to increase the compensation due thereunder (“**Amendment No. 4**”); and

WHEREAS, the Parties, each having the authority to do so, desire to amend the Agreement for a fifth time to extend the term for seven (7) months and eighteen (18) days and to increase the compensation due hereunder.

NOW THEREFORE, for good and valuable consideration, the Parties amend the Agreement as follows:

1. **Extension.** The Agreement is extended for seven (7) months and eighteen (18) days from the Effective Date through August 18, 2020.

2. **Compensation.** The compensation described in Article IV Section B of the Agreement is increased by \$30,000.00 to an amount not to exceed \$313,555.00

3. **Invoices.** Article I Section D entitled "Invoices" is deleted in its entirety and replaced, as follows:

D. Invoices.

1. *The Contractor must submit invoices annually (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 the following information:*

- a. Contractor's name, address, and contact information;*
- b. Contract or purchase order number issued by the City;*
- c. The name of the City department to be invoiced (i.e., NORD);*
- d. The services performed each month; and*
- e. Itemized description of costs.*

2. *All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.*

3. *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.*

4. **Payment.** Article III Section B entitled "Payment" is amended by adding Subsection 8 at the end thereof, as follows:

8. **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.*

5. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Agreement:

COST RECOVERY

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."

ARTICLE VI - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, 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 Agreement, 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 Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

DECLARED DISASTER

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

LIVING WAGES

To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code (“Living Wage”). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

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. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

10. **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.

11. 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 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. (ii) 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 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 Agreement, or take any such legal action permitted by law or this Agreement. (iii) 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. (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 the following pages]

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

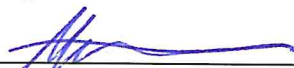
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 15TH of July, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorian

[VSI AND NORD signatures contained on the following pages]

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VERMONT SYSTEMS, INC.

BY: David A. Wirtz
DAVID WIRTZ, DIRECTOR OF SALES



[NORD signature contained on the following page]

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NEW ORLEANS RECREATION DEVELOPMENT COMMISSION

BY: Brian P. Egana 7-7-20

BRIAN P. EGANA, CHAIRMAN

[End of Amendment]

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