



## VENDOR AGREEMENT

This Agreement made this 19th day of **December, 2016**, by and between City of League City (City), located in League City, Texas and **Southwest Signal**, located at **1107 Jackson Street, South Houston TX 77587** (Contracting Party).

City and Contracting Party agree as follows:

1. **CONTRACT TERM:** The initial term of this Agreement shall be for a period of **one (1) year(s)**, from **1, March 2017 to 28, February 2018 (zero option periods remain)**. The parties may mutually agree in writing to extend the term of the Agreement.

City reserves the right to terminate the Agreement at any time, with or without cause, on thirty (30) days prior written notice to Contracting Party.

2. **CONTRACT DOCUMENTS/WORK STATEMENTS:** The provisions of the attached City Request for Proposal - RFP (or Request for Qualifications - RFQ) dated **December 2013 (14-008)**, Contracting Party's response to RFP dated **7, January 2014**, and Exhibits N/A (if any), are hereby incorporated by reference and made a part of this Agreement. Contracting Party's representations and warranties regarding its Work are set forth in Exhibit N/A (if any). To the extent there are conflicts or inconsistencies between the documents, the order of priority in which documents will be interpreted is as follows:

- The provisions of this document

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3. **CONTRACT FEE:** In consideration for the mutual covenants contained herein, City shall pay Contracting Party for work satisfactorily performed as follows: **original unit prices will be held for renewal period (3/1/2017 - 2/28/2018)**. Total compensation shall not exceed **\$80,000 based on original unit prices**. Payment terms for amounts due from City under the Agreement (including due dates, late fees and interest) are governed by Chapter 2251 of the Texas Government Code.



4. **CONFLICT OF INTEREST:** Contracting Party assures that to the best of its knowledge there exists no conflict of interest or appearance of a conflict between Contracting Party's family, business or financial interest and the services provided under this Agreement. Should this situation change during the term of this Agreement, Contracting Party will advise City of such change.

5. **INDEPENDENT CONTRACTOR:** This Agreement shall not be construed to create a partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. The relationship of the Contracting Party to City is and shall continue to be that of an independent contractor, and no liability or benefits such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Agreement or its performance. No relationship, other than that of independent contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor, and the Contracting Party hereby agrees to hold City harmless from any such claims by it or its associates, and any cost or expense related thereto.

6. **DEFAULT:** In the event of a failure by Contracting Party to satisfactorily perform the services specified herein and/or a default by Contracting Party in abiding by the other terms and conditions of this Agreement, City may terminate the Agreement on written notice to Contracting Party and Contracting Party shall be liable for all damages, costs, and expenses (including attorney fees) incurred by City related to this default.

7. **ALTERNATIVE DISPUTE RESOLUTION:** The dispute resolution process provided for in Chapter 154 of the Texas Civil Practice and Remedies Code may be used, by City and Contracting Party to attempt to resolve any claim for breach of contract made by Contracting Party, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by City or the State of Texas of the right to seek redress in a court of law.

8. **ASSIGNMENT:** The parties recognize that this contract is based upon the skill and expertise of the parties and therefore agree that the contract and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this contract.

9. **COMPLIANCE WITH LAW:** Contracting Party shall certify that he/she or it is in compliance with all applicable state and federal laws, including non-discrimination laws as it relates to the terms and conditions of the agreement.



10. NON-APPROPRIATIONS: Contracting Party understands that City is a governmental entity, and should the Legislature fail to provide funding for any period during the term of this contract, City shall be excused for all liability for payment. City is required to give Contracting Party written notice within thirty (30) days after learning that the funds will not be available. Upon receiving written notice from City, this contract will automatically terminate

11. NOTICES: Any notice given under this contract by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

12. OFFICIALS NOT TO BENEFIT: No Mayor, Council-person, officer, director, employee, administrator and representative of City shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

13. GOVERNING LAW/VENUE/STATUTE OF LIMITATIONS: The validity of this Agreement and the interpretation of its terms and the applicable statute of limitations for any cause of action brought by or against City pursuant to the Agreement shall be governed by the laws of the State of Texas. Jurisdiction for any legal proceedings incident to this agreement shall lie in Galveston County, Texas.

14. FORCE MAJEURE: In the event of Force Majeure, City may terminate this agreement by written notice following such casualty and City shall not be responsible for any damages sustained by Contracting Party. Force Majeure shall mean fire, earthquake, flood, act of God, strikes or other labor disturbances, riots or civil commotion, litigation, terrorism, war or other acts of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any cause above-mentioned which is beyond the control or authority of City.

15. SUBCONTRACTS: Any subcontracts and outside associates or consultants required by Contracting Party in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Contracting Party shall ensure that each subcontractor complies with all provisions of the Agreement and this Addendum. Contracting Party shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.



16. TAX EXEMPTION: City and Contracting Party agree that City will not be required to pay any taxes for which it can demonstrate an exemption.

17. CONFIDENTIALITY: Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval.

18. INTELLECTUAL PROPERTY: Contracting Party represents that it has all intellectual property rights necessary to enter into and perform its obligations under the Agreement and shall indemnify, defend and hold harmless the State of Texas and City against any action, claim, liability, loss or expense related to such intellectual property rights and representations. Contracting Party will pay any damages attributable to such claim that are awarded against the State of Texas and/or City in a judgment or settlement.

19. INDEMNIFICATION: Contracting Party shall indemnify and hold harmless City, and each of its regents, officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages and liabilities, including without limitation attorneys' fees and reasonable litigation costs, arising out of, connected with, or resulting from any acts or omissions of Contracting Party or any agent, employee, subcontractor, or supplier of Contracting Party in the execution or performance of this contract.

20. INSURANCE: For the entire term of the Agreement ("Term"), Contracting Party shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence. If, during the Term, Contracting Party will enter City property, Contracting Party shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name City as Additional Insured. Contracting Party shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Contracting Party shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

21. AUDIT; INDEPENDENT AUDITS; RIGHT TO AUDIT; RETENTION; SUPPORTING DOCUMENTS: The Contracting Party agrees and authorizes City and/or the State Auditor (collectively, "Auditor") to conduct audits or investigations in connection



with this Agreement. Contracting party agrees to cooperate with Auditors conducting such audits or investigations and to provide all information and documents reasonably requested. Contracting Party will include this provision in all contracts with permitted subcontractors.

22. **LIMITATIONS:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

23. **SOVEREIGN IMMUNITY:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.

24. **REPRESENTATIONS BY CONTRACTING PARTY:** Contracting Party represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Contracting Party's performance of this Agreement. If Contracting Party is a business entity, Contracting Party warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contracting Party.

25. **ELIGIBILITY TO RECEIVE PAYMENT:** Contracting Party certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this representation is inaccurate.

26. **PAYMENT OF DEBT/DELINQUENCY TO STATE:** Contracting Party certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contracting Party agrees that any payments owing to Contracting Party under the Agreement may be applied directly toward any debt or delinquency that Contracting Party owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.



27. **PRODUCTS AND MATERIALS PRODUCED IN TEXAS:** If Contracting Party will provide services under the Agreement, Contracting Party covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

28. **TRAVEL EXPENSES:** If the Agreement requires City to reimburse for travel expenses, the Contracting party shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines applicable to State of Texas employees.

29. **RISK OF LOSS:** All work performed by Contracting Party pursuant to the Agreement will be at Contracting Party's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Contracting Party's responsibility.

30. **PUBLICITY:** Contracting Party shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.

31. **LEGAL CONSTRUCTION/SEVERABILITY:** In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

32. **NON-WAIVER:** No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

33. **ENTIRE AGREEMENT:** This contract constitutes the entire contract and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing.



34. AUTHORITY: The person signing below on behalf of City and Contracting Party warrants that he/she has the authority to execute this contract according to its terms.

35. AMENDMENT: This Agreement may be changed, amended, modified, extended or assigned only by mutual consent of the parties provided that consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect.

36. BINDING AGREEMENT: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, City and Contracting Party, by and through their duly authorized officers and representatives, have executed this Agreement as of the date first above written.

CITY OF LEAGUE CITY

CONTRACTING PARTY:

Southwest Signal Supply, Inc.

By: John Baumgartner

By: Roxanne

Title: Deputy City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: 12-22-16

Department Director: \_\_\_\_\_

[Signature]

1/3/2017