

**AMENDMENT NO.1  
TO GENERAL SERVICES AGREEMENT FOR PREVENTATIVE MAINTENANCE SERVICES**

This Amendment No.1 to the **GENERAL SERVICES AGREEMENT FOR PREVENTATIVE MAINTENANCE SERVICES** (this "**Amendment No. 1**") is made and entered into this 23rd day of January , 2019, ("**Amendment No. 1 Effective Date**") between The City of Ann Arbor ("**City**") and Vertiv Corporation (f/k/a Vertiv Services, Inc.), having offices at 1050 Dearborn Drive, Columbus, Ohio 43085 ("**Contractor**").

WHEREAS, City and Contractor entered into General Services Agreement on February 5, 2018, (the "Effective Date"), (the "Agreement"); and

WHEREAS, City and Contractor wish to amend certain understandings as set forth in the Agreement, specifically Contractor's change of name and an extension of the Agreement terms.


NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

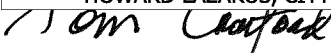
1. **Amended Terms.** The Agreement is hereby amended as follows:
  - a) Vertiv Services, Inc. changed its name to Vertiv Corporation. Thus, all references to Contractor in the Agreement, any related Amendment, Proposal, Purchase Order, Schedule, or other Attachment shall mean Vertiv Corporation.
  - b) Article II Duration shall be deleted in its entirety and replaced with the following:  
This Agreement shall become effective January 23, 2019, and shall remain in effect until January 22, 2022, unless terminated as provided for in Article XII.
  - c) Exhibit A is deleted and replaced with the attached Exhibit A.
  - d) Exhibit B is deleted and replaced with the attached Exhibit B.


Except as amended herein, the remaining terms and conditions of the Agreement shall remain in full force and effect.

The Agreement and this Amendment No. 1, together with all exhibits, schedules, and attachments thereto, are the complete and exclusive agreement between the parties with respect to the subject matter hereof. Any changes to the terms and conditions within a P.O., Schedule, Proposal, etc. shall be null and void.


IN WITNESS WHEREOF, each party hereto has, through its authorized representative, executed this Amendment No. 1 as of the date set forth below.

 01/14/2019  
HOWARD LAZARUS, CITY ADMINISTRATOR

 01/04/2019

 01/10/2019  
STEPHEN POSTEMA, CITY ATTORNEY

**VERTIV CORPORATION**

By:  \_\_\_\_\_

Name: Edward Gary Seigerst

Title: Senior Contract Administrator

Date: January 4, 2019

Date: 01/15/2019

**GENERAL SERVICES AGREEMENT BETWEEN  
VERTIV SERVICES, INC.  
AND THE CITY OF ANN ARBOR  
FOR PREVENTATIVE MAINTENANCE SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and Vertiv Services, Inc. ("Contractor") a Delaware Corporation, with its address at 610 Executive Campus Drive, Westerville, Ohio 43082, agree as follows on this 5th day of February, 2018.

The Contractor agrees to provide services to the City under the following terms and conditions:

**I. DEFINITIONS**

Administering Service Area/Unit means Information Technology.

Contract Administrator means Jennifer Grimes, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means services performed by Contractor for the City, as described in Exhibit A.

**II. DURATION**

This Agreement shall become effective on January 23, 2018, and shall remain in effect until January 22, 2019, unless terminated as provided for in Article XII.

**III. SERVICES**

- A. The Contractor agrees to provide preventative maintenance services ("Services"), as more specifically described in Exhibit A, and to furnish all materials, equipment and labor necessary and to abide by all the duties and responsibilities applicable to it for the Project in accordance with the requirements and provisions of this Agreement.

The intention of the Agreement is to include all labor and materials, equipment and transportation necessary for the proper execution of the Project. Materials or work described in words that so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

#### IV. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

#### V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid on the basis of the price restated in Exhibit B. The total fee to be paid the Contractor for the Services shall not exceed twenty-three thousand four hundred twenty-eight dollars and eighty cents (\$23,428.80). Payment shall be made net thirty (30) days from the date of Contractor's invoice.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon written request and submitted in summary form with each invoice.

#### VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any). The City acknowledges and agrees that Contractor is entitled to maintain a Self-Insured Retention, evidenced by an endorsement, in connection with such insurance policies up to \$500,000.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. Any insurance provisions regarding additionally insured status and the primary nature of Contractor's insurance shall be limited to the extent of Contractor's indemnification obligations herein.
- D. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all third party suits, claims, judgments and expenses, including reasonable attorney's fees, resulting or alleged to result, from any intentionally tortious or negligent acts or omissions by Contractor or its employees and agents, reduced to the extent of any other party's negligence, occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. The Contractor shall defend the City in accordance with and to the extent of the above indemnification, provided that the Contractor is: i) promptly notified by the City, in writing, of any claims, demands or suits for such damages or injuries; and ii) given all reasonable information and assistance by the City. Contractor shall have the right to select and direct counsel and settle the claim, provided the City shall have the right to review and approve such settlement, provided such approval may not be unreasonably withheld or delayed. The City reserves the right to participate in the defense with counsel of its choosing at its sole cost and expense.

#### VII. WAGE REQUIREMENTS

The parties do not believe that the Scope of Work outlined in Exhibit A is not encompassed within any prevailing wage classifications provided under any prevailing wage laws, statutes, rules, or regulations, including without limitation, Davis Bacon Act, ("Prevailing Wage Law") therefore Contractor takes express exception to any and all prevailing wage requirements and shall not be required to comply with such for the work described in Exhibit A, and further shall not be required to submit certified payroll and related documentation related to the same. To the extent the parties are in error related to the foregoing, Contractor shall indemnify, defend, and hold harmless the City and its directors, officers, and employees from and against any and all claims, costs, expenses, liabilities, and losses to the extent arising out of Contractor's violation of any Prevailing Wage Law held to be applicable to Contractor's scope of work by a court of competent jurisdiction or agency with jurisdiction over the matter.

If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

Contractor agrees that all subcontracts entered into by the Contractor shall contain similar wage provision covering subcontractor's employees who perform work on this contract.

#### **VIII. NON-DISCRIMINATION**

The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of Title IX of the Ann Arbor City Code, and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

#### **IX. REPRESENTATIONS AND WARRANTIES BY THE CONTRACTOR**

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience and licenses (if applicable) necessary to perform the Services it is to provide pursuant to this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services it is to provide pursuant to this Agreement.
- D. The Contractor certifies that it has no personal or financial interest in the Project other than the fee it is to receive under this Agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of the Services it is to provide pursuant to this Agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this Agreement.
- E. The Contractor certifies that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes. Further Contractor agrees that the City shall have the right to set off any such debt against compensation awarded for Services under this Agreement.
- F. Contractor warrants that it will perform the Services as described in this Agreement and will exercise all reasonable skill, care, judgment, and due diligence in the performance of the Services. Contractor warrants that all Services performed shall be free from faulty workmanship for a period of sixty (60) days from completion of Services. To the extent assignable, Contractor assigns to the City any warranties that are made by manufacturers and suppliers of parts. EXCEPT AS SPECIFIED ABOVE, PARTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. THE WARRANTIES SET FORTH IN THIS SECTION IX(F) ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY CONTRACTOR WITH RESPECT TO THE SERVICES AND

PARTS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO CONTRACTOR IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

#### X. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

#### XI. ASSIGNMENT.

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City, such consent not to be unreasonably withheld or delayed. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.

#### XII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement upon five (5) days written notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance written notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles VI and IX shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

#### XIII. REMEDIES AND LIMITATION OF LIABILITY

- A. **THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO, EITHER CORRECT PERFORMANCE FOR THAT PORTION OF THE SERVICES FOUND BY CONTRACTOR TO BE DEFECTIVE OR REFUND OF THE PRICE PAID FOR SERVICES.** This Agreement does not, and is not intended to waive or otherwise affect the City's governmental immunity
- B. **CONTRACTOR SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF THE PARTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. EXCLUDING CONTRACTOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, AND INDEMNIFICATION OBLIGATIONS REGARDING THIRD PARTY CLAIMS HEREIN, IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN**

**CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL CONTRACTOR'S LIABILITY TO THE CITY EXCEED AND AGGREGATE OF ONE MILLION DOLLARS (\$1,000,000).**

- C. **THE CITY AGREES THAT CONTRACTOR'S LIABILITY TO THE CITY AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.**
- D. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

#### **XIV. NOTICE**

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

Vertiv Services, Inc.  
Attn: Legal Department  
610 Executive Campus Drive  
Westerville, Ohio 43082

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor  
Attn: Jennifer Grimes  
301 E. Huron St.  
Ann Arbor, Michigan 48104

#### **XV. CHOICE OF LAW AND FORUM**

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, without regard to its conflict of law principles. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

#### **XVI. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use.

**XVII. SEVERABILITY OF PROVISIONS**

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

**XVIII. EXTENT OF AGREEMENT**

This Agreement, together with Exhibits A, B, and C (attached) constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

**FOR CONTRACTOR**

By Stephanie L. Hamm  
Stephanie L. Hamm  
Its Contract Administrator

**FOR THE CITY OF ANN ARBOR**

By Howard S. Lazarus  
Howard S. Lazarus, City Administrator

[signatures continue on next page]

**Approved as to substance**

Tom Crawford Type  
Name Tom Crawford  
Service Area Administrator

**Approved as to form and content**

Stephen K. Postema  
Stephen K. Postema, City Attorney  
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