

**AMENDMENT NO. 1**

**BY AND BETWEEN**

**GREATER ORLANDO AVIATION AUTHORITY  
AND  
ELECTROSONIC INC.  
TO**

**PURCHASING CONTRACT 09-22**

THIS **AMENDMENT NO. 1** made and entered into as of the 17th day of November, 2022, by and between the GREATER ORLANDO AVIATION AUTHORITY (hereinafter referred to as "Authority") and ELECTROSONIC Inc., (hereinafter referred to as the "Contractor").

**WITNESSETH:**

**WHEREAS**, by Contract dated September 1, 2022, Contractor agreed to provide Experiential Media Environment (EME) Maintenance & Support Services at Orlando International Airport, Orlando, Florida; and

**WHEREAS**, the term of the Contract currently expires on August 31, 2027; and

**WHEREAS**, the Authority and Contractor agrees to adjust the Contract to:

**WHEREAS**, the Authority requires the Contractor's prior written consent, which Authority is willing to give on the terms and conditions set forth below.

**WHEREAS**, Authority and Contractor agree to amend the Contract as follow:

- a. Section 13.1.c – Enhancement Services. The Aviation Authority shall pay the services as described in Section 14.4, Rate Schedule for Non-Covered Services.
- b. Section 13.2.e.1) – Enhancements. The following sentence was added to this Section: "Enhancements may include any repairs not resulting from a warranty failure and accidental or other breakages that may or may not be covered by insurance."
- c. Section 14.1.a.1) – Maintenance Price – The Contractor shall invoice the Aviation Authority by the tenth (10th) day of each month following the end of the month in which services were performed under the Contract, accompanied by such supporting documentation and other backup material as the Aviation Authority may reasonably require. The Contractor's invoice shall generally describe the service rendered, the actual cost of the lift plus ten percent (10%) prorated every month, which cannot exceed the monthly maintenance fee for the Covered Services Maintenance Payment Schedule. The Contractor's invoice shall generally describe the service rendered and the monthly maintenance fee for the Covered Services Maintenance Payment Schedule as described in Section 14.3.
- d. Section 14.2 – Payment. Amounts due to Contractor will be billed to Aviation Authority as described in Section 14.1 and will be due and payable within thirty (30) days after the

date of the billing invoice. Monthly invoices will include the annual Covered Services Price billed for Maintenance Services.

- e. Section 14.5.b – Non-Covered Services, System Components, Shipping: Non-Covered Services, System components, shipping, etc. during a Maintenance Term as defined in this Section will be mutually agreed upon by the Aviation Authority and Contractor. Any Non-Covered Services, System components, and shipping amounts above the authorized value of this Section during a Maintenance Term will require an amendment to the Contract. ***The Aviation Authority and Contractor agree that any work performed under Non-Covered Services is in excess of the Covered Services payments as described in Section 14.3.***

**WHEREAS**, the Authority requires the Contractor’s prior written consent, which Authority is willing to give on the terms and conditions set forth below.

**NOW, THEREFORE**, for and in consideration of the premises and mutual covenants herein contained, the parties hereby amend the Contract as follows:

1. **Effective Date:** The effective date of this Amendment shall be September 1, 2022.
2. **Contract Adjustment.** The Aviation Authority’s Specification shall be amended by revising the following Sections as described above: a) Section 13.1.c – Enhancement Services; b) Section 13.2.e.1) – Quotation; c) Section 14.1.a.1) – Maintenance Price; d) Section 14.2 a – Payment; and f) Section 14.5.b – Non-Covered Services, System Components, Shipping. Attached to this Amendment as Attachment “A-1” and incorporated in this Amendment by this reference.
3. **Compensation.** No Compensation changes are required, or will be made, with respect to this Amendment. Compensation shall be paid pursuant to the terms and conditions as provided in the Contract.
4. **Contractor’s Performance Bond or Letter of Credit.** Upon execution of this Amendment No. 1, no changes are required, or will be made, with respect to this Amendment. Performance Bond No. **107662092** in the amount of **Three Hundred Thirty-Two Thousand and Two-Hundred Forty-Four Dollars (332,244)**, which expires on September 15, 2023, shall remain the same as the terms and conditions of the Contract.
5. **Suits/Proceedings.** The Contractor agrees that any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of the Contract or any matter in connection therewith shall be brought only in a court of competent jurisdiction in Orange County, Florida. The Contractor waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Contractor agrees to submit to the jurisdiction of the Florida courts and irrevocably agrees to accept service of process by U.S. mail.
6. **Public Entity Crimes Act.** The Contractor acknowledges the following notice: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount set forth in s.287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.”

7. **Continuing Effect of Contract Provisions.** Except as amended by this Amendment No. 1, the Contract shall continue in full force and effect in accordance with its terms and conditions.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 1 to be duly executed as of the date and year first above written.

**“AVIATION AUTHORITY”**

ATTEST:

**GREATER ORLANDO AVIATION AUTHORITY**

*[Handwritten Signature]*  
Kevin Thibault  
Chief Executive Officer  
Nov 17 2022 10:37 AM

By: \_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Assistant Secretary

[Official Seal]

**“CONTRACTOR”**

ATTEST:

**ELECTROSONIC INC.**

*Howard McKay*  
\_\_\_\_\_  
Secretary GGC                      Nov 9, 2022

By: *Ewan Smith*  
\_\_\_\_\_  
Ewan Smith (Nov 9, 2022 12:54 EST)

Its: Ewan Smith  
\_\_\_\_\_  
President & MD

[CORPORATE SEAL]

\_\_\_\_\_  
Print or Type Name and Title



Approved as to Form and Legality  
this 10 day of November, 2022  
Nelson Mullins Riley & Scarborough, LLP  
By: *[Handwritten Signature]*  
\_\_\_\_\_  
Greater Orlando Aviation Authority

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13. ENHANCEMENT SERVICES

13.1. General

- a. Enhancement services consist of any service that is not covered under the previously defined services listed in the Statement of Work. These include services that are requested by the Aviation Authority that change some functionality of the system.
- b. Any enhancement service must follow the Aviation Authority Change Request procedures. These include:
  - 1) AAR submits Change Request Form to Contractor.
  - 2) Contractor reviews Change Requests, clarifies requirements.
  - 3) Contractor evaluates Change Request and provides an estimate of the resources needed, including the skillsets needed, the number of hours by skillset, the hourly cost for each skillset, the total labor costs, any equipment needed, unit cost of equipment and units of equipment needed, shipping costs if applicable, elapsed time to complete request with a milestone schedule.
  - 4) The AAR reviews the Change Request estimate and negotiates estimate until both parties are satisfied or the change is rejected.
  - 5) Once the Change request has been accepted, the Contractor can begin work.
- c. Change Request estimates are developed using the Skillsets and hourly rates listed in the Contract. Should there be a necessary skillset that is not covered in the **Section 14.4, Rate Schedule for Non-Covered Services**, the Contractor may submit a request to the AAR for consideration to be added to the list.

13.2. Quotation

- a. Exhibit B includes the hourly rates by skillsets that may be applied on a quotation for the necessary services needed.
- b. Equipment costs that are not listed in the Contract should be provided at best possible pricing.
- c. Shipping fees must be specifically quoted.
- d. All costs shall be presented.

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- e. Service Budget has been reserved for enhancement services. If the cost of the enhancement exceeds the amount reserved in the service budget, special arrangements would need to occur. These special arrangements include determining the budget source, committee approvals, contract amendments all requiring additional time and planning to complete and should be considered:
  - 1) Enhancements are considered development that provide the Aviation Authority with requested features that deviate from the base accepted system. They are any modifications or additions that, when made or added to the software materially changes its utility, efficiency, functional capability or application, or new content but does not constitute an error correction. **Enhancements may include any repairs not resulting from a warranty failure and accidental or other breakages that may or may not be covered by insurance.**
  - 2) Prior to the start of development, the Contractor will provide the Aviation Authority with an estimate of hours required to deliver the enhancement and the labor rates provided in Exhibit B shall apply to all development considered as an enhancement.
  - 3) Upon acceptance of a task order requiring an enhancement, the Contractor shall commence development as a Change Order or Amendment to the Contract.

**13.3. Testing**

- a. Software change resulting from a Change Request must be thoroughly tested before implementing them in the EME System. Contractor is expected to follow industry best practices to assure that the enhancement performs in the manner expected by the Change Request and will not adversely impact the operation of the EME system or degrade its performance.
- b. The Aviation Authority does not have a test environment in which to test functionality prior to releasing the enhancement to the production environment. There may be opportunities for limited and controlled testing of the enhancement in the production environment during off hours, and this would need to be tightly coordinated with the Aviation Authority if it was deemed acceptable in the first place.
- c. Notwithstanding the subsection above, the Contractor would need to certify testing was completed successfully and be able to document said testing to the AAR if requested.
- d. At minimum, testing must certify that:

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- 1) Changes completed fully address the intended functionality of the Change Request.
  - 2) Changes made have not adversely impacted the other operations of the EME.
- e. Unless otherwise agreed to by the AAR, all aspects of the EME must be tested during a change Request.

**13.4. Program Management**

- a. The Contractor's program management shall be sufficiently comprehensive to enable the Aviation Authority's CO to ascertain that the Contractor will meet the requirements of the Change Request.
- b. Contractor's PM. The Contractor shall designate a responsible individual, subject to approval by the CO, to serve as PM for the Change Request. This individual shall have prior experience in management of EME equipment and software and their implementation.
- c. The Contractor's PM shall be responsive to the needs of the Aviation Authority as required. The PM shall ensure that the project tasks are completed on time and within budget. The PM shall coordinate design and engineering activities, shall keep the Aviation Authority fully informed of the status of the project, and shall promptly and regularly notify the Aviation Authority of any problems or difficulties that may impact the timely or effective completion of the task, milestone, or project.
- d. The Contractor's PM shall coordinate with the AAR what deliverables will constitute the Change Request and shall submit a schedule for the completion of the change request, identify all necessary contacts with applicable Aviation Departments general testing plans, training plans and any other relevant work items needed to satisfy the Change Request implementation.
- e. The Contractor PM shall conduct periodic Status Meetings not less than twice a month to report on status, issues, risks and communication needs. The Contractor PM will coordinate with the AAR as to whom to include in these Status meetings.
- f. Within two (2) weeks of the Notice to Proceed, the Contractor PM shall organize a Change Request kickoff meeting. The Contractor PM shall coordinate with the AAR as to whom to invite.

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14. **Exhibit B – PRICE SCHEDULE**

14.1. **Maintenance Price**

- a. Rate Schedule for Covered Services Maintenance. The Aviation Authority shall pay Contractor at the rate(s) set forth here, for the Covered Services to be performed under the Maintenance Services during Regular Working Hours (the "Covered Services Price").

***1) The Contractor shall invoice the Aviation Authority by the tenth (10th) day of each month following the end of the month in which services were performed under the Contract, accompanied by such supporting documentation and other backup material as the Aviation Authority may reasonably require. The Contractor's invoice shall generally describe the service rendered, the actual cost of the lift plus ten percent (10%) prorated every month, which cannot exceed the monthly maintenance fee for the Covered Services Maintenance Payment Schedule. The Contractor's invoice shall generally describe the service rendered and the monthly maintenance fee for the Covered Services Maintenance Payment Schedule as described in Section 14.3.***

- b. Non Covered Services Maintenance. In addition to the Covered Services Price, the Aviation Authority shall pay Contractor amounts billed for Covered Services performed, as specified in Section 14.4 - Rate Schedule for Non Covered Services, including reasonable charges for parts, materials, consumable items and Software releases included in Non-Covered Services to be billed monthly.

14.2. **Payment**

- a. Amounts due to Contractor will be billed to Aviation Authority as described in Section 14.1 and will be due and payable within thirty (30) days after the date of the billing invoice. **Monthly** invoices will include the annual Covered Services Price billed for Maintenance Services.
- b. Monthly invoices will include charges for time and materials for any Non-Covered Services. The Aviation Authority shall pay when due all amounts billed without deduction or setoff of any amounts owed or claimed to be owed by Contractor to the Aviation Authority arising under this Contract.

14.3. **Covered Services Maintenance Payment Schedule**

**Note:** Lift cost is an estimated yearly cost of \$103,860.00 to the Aviation Authority. The contracted yearly cost will be the actual monthly lease cost at the time of Contract, times 12 plus 10%. In addition, if the Aviation Authority terminates this Contract before the completion of the lease period, the Aviation Authority will be responsible for buying out the lease contract.



## ATTACHMENT "A-1"

Maintenance Term	Covered Services Period	Maintenance Annual Price
Year 1	September 1, 2022 – August 31, 2023	\$337,071.00
Year 2	September 1, 2023 – August 31, 2024	\$682,158.00
Year 3	September 1, 2024 - August 31, 2025	\$727,942.00
Year 4	September 1, 2025 - August 31, 2026	\$977,666.00
Year 5	September 1, 2026 - August 31, 2027	\$1,040,557.00
		<b>\$3,765,394.00</b>

**14.4. Rate Schedule for Non-Covered Services**

- Time Increments. Non-Covered Services rates are billed in 30 minute increments with the minimum periods defined in the table below. Time exceeding any 30 minute increment is rounded up to the next increment.
- Non-Covered Services. These rates are applicable during normal Contractor business hours for services outside of the scope of work, non-covered services.
- Non-Covered Services rates are fixed for Years 1-5 of the Maintenance Services.

**Rate Schedule for Non-Covered Services Table - Year 1**

Labor Category	Minimum Time	Non Covered Services Hourly Rate
Service / Maintenance Technician	Half Hour	\$125.00
Project Engineer	Half Hour	\$135.00
Project Manager	Half Hour	\$175.00
Design Consultant	Half Hour	\$215.00
Executive Consultant	Half Hour	\$275.00

**Rate Schedule for Non-Covered Services Table - Year 2**

Labor Category	Minimum Time	Non Covered Services Hourly Rate
Service / Maintenance Technician	Half Hour	\$129.00
Project Engineer	Half Hour	\$140.00
Project Manager	Half Hour	\$181.00
Design Consultant	Half Hour	\$222.00
Executive Consultant	Half Hour	\$284.00

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## Rate Schedule for Non-Covered Services Table - Year 3

Labor Category	Minimum Time	Non Covered Services Hourly Rate
Service / Maintenance Technician	Half Hour	\$133.00
Project Engineer	Half Hour	\$145.00
Project Manager	Half Hour	\$187.00
Design Consultant	Half Hour	\$229.00
Executive Consultant	Half Hour	\$293.00

## Rate Schedule for Non-Covered Services Table - Year 4

Labor Category	Minimum Time	Non Covered Services Hourly Rate
Service / Maintenance Technician	Half Hour	\$137.00
Project Engineer	Half Hour	\$150.00
Project Manager	Half Hour	\$193.00
Design Consultant	Half Hour	\$236.00
Executive Consultant	Half Hour	\$302.00

## Rate Schedule for Non-Covered Services Table - Year 5

Labor Category	Minimum Time	Non Covered Services Hourly Rate
Service / Maintenance Technician	Half Hour	\$142.00
Project Engineer	Half Hour	\$155.00
Project Manager	Half Hour	\$199.00
Design Consultant	Half Hour	\$244.00
Executive Consultant	Half Hour	\$312.00

14.5. Non-Covered Services, System components, Shipping

- a. Non-Covered Services, System components, shipping, etc. are a not to exceed amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) annually.

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Maintenance Term	Non-Covered Services Period	Annual Not to Exceed Amount
Year 1	September 1, 2022 – August 31, 2023	\$100,000.00
Year 2	September 1, 2023 - August 31, 2024	\$100,000.00
Year 3	September 1, 2024 - August 31, 2025	\$100,000.00
Year 4	September 1, 2025 - August 31, 2026	\$100,000.00
Year 5	September 1, 2026 - August 31, 2027	\$100,000.00
		<b>\$500,000.00</b>

- a. Non-Covered Services, System components, shipping, etc. during a Maintenance Term as defined in this Section will be mutually agreed upon by the Aviation Authority and Contractor. Any Non-Covered Services, System components, and shipping amounts above the authorized value of this Section during a Maintenance Term will require an amendment to the Contract. ***The Aviation Authority and Contractor agree that any work performed under Non-Covered Services is in excess of the Covered Services payments as described in Section 14.3.***









# 09-22 A1 - Cont Adj Review - MASTER

Final Audit Report

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