

K20-578

AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

**THE CITY OF NEW ORLEANS,
NEW ORLEANS BUILDING CORPORATION,**

AND

DANA BROWN & ASSOCIATES, INC.

THIS THIRD AMENDMENT is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), the New Orleans Building Corporation, represented by Cynthia M. Connick, Chief Executive Officer (the “NOBC”), and Dana Brown & Associates, Inc., represented by Dana Nunez Brown, President (the “Consultant”). The City and the Consultant are sometimes collectively referred to as the “Parties.” The Amendment is effective October 12, 2019 (the “Effective Date”).

RECITALS

WHEREAS, on October 12, 2016, the City, NOBC, and the Consultant entered into a Professional Services Agreement for the purpose of providing professional design and contract administration services for the Spanish Plaza Renovation Project and Area Riverfront Water Plan (the “Agreement”); and

WHEREAS, on November 1, 2017, the City, NOBC, and the Consultant entered into Amendment No. 1 to extend the term of the Agreement for one year, through October 11, 2018;

WHEREAS, on February 11, 2019, the City, NOBC, and the Consultant entered into Amendment No. 2 to extend the term of the Agreement.

WHEREAS, the City and the Consultant, each having the authority to do so, desire to enter this Amendment to extend the term of the Agreement and to provide for additional compensation.

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

1. **Extension.** In accordance with Article VII of the Agreement, the term is extended for an additional 1 year from the Effective Date through October 11, 2020.
2. **Compensation.** The compensation described in Articles V and VI of the Agreement is increased by \$171,115.24, from \$879,329.24 to a total amount not to exceed \$1,050,444.48.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

LIVING WAGES

To the fullest extent permitted by law, the Consultant 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 Consultant 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.

Compliance with City's Hiring Requirements — Ban the Box.

1. The Consultant agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Consultant 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.

2. 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 such breach, the City will provide the Consultant notice of noncompliance and allow a thirty (30) days come into compliance. If after providing notice and thirty (30) days to cure, the

Consultant remains noncompliant, the City may move to suspend payments to Consultant, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. 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.

4. The Consultant will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-contractors to comply with those provisions.

ARTICLE - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Consultant (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Consultant's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, 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, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Consultant 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 Consultant in any of Consultant'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 Consultant. The Consultant 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 Consultant 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 Consultant fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

Invoices.

1. The Consultant 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 Consultant;
- 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. Invoices will be processed in accordance with Article VI of the Agreement.

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

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

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.

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 Consultant shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Consultant fails to meet its contractual obligations.

4. **Convicted Felon Statement.** The Consultant swears that it complies with City Code § 2-8(c). No Consultant 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.

5. **Non-Solicitation Statement.** The Consultant 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 Consultant 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.

6. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

7. **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.

8. **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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, the City, NOBC, and the Consultant, through their duly authorized representatives, execute this Agreement.

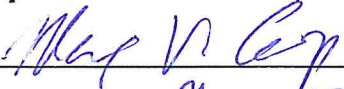
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 29TH of June, 2020

FORM AND LEGALITY APPROVED:

Law Department

By: 
Printed Name: Max V. Camp

NEW ORLEANS BUILDING CORPORATION

BY: _____
CYNTHIA M. CONNICK, CHIEF EXECUTIVE OFFICER

DANA BROWN & ASSOCIATES, INC.

BY: 
DANA NUNEZ BROWN, PRESIDENT


FEDERAL TAX I.D.

IN WITNESS WHEREOF, the City, NOBC, and the Consultant, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 202__

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

NEW ORLEANS BUILDING CORPORATION

BY: Cynthia M. Connick
CYNTHIA M. CONNICK, CHIEF EXECUTIVE OFFICER

DANA BROWN & ASSOCIATES, INC.

BY: _____
DANA NUNEZ BROWN, PRESIDENT

FEDERAL TAX I.D.