

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

BAROWKA AND BONURA ENGINEERS AND CONSULTANTS, LLC

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Barowka and Bonura Engineers and Consultants, L.L.C., represented by Jeffrey Bonura, Sole Member (the “**Contractor**”). The City and the Contractor are sometimes each referred to as a “**Party**,” and collectively, as the “**Parties**.” The Amendment is effective as of August 25, 2022 (the “**Effective Date**”).

RECITALS

WHEREAS, on August 25, 2021, the City and the Contractor entered into a Professional Services Agreement for a FEMA hazard mitigation assistance consultant (the “**Agreement**”); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term and increase the compensation to ensure continuity of services;

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

1. **Extension.** In accordance with Article V Section B of the Agreement, the term is extended for an additional two years from the Effective Date through August 24, 2024.
2. **Compensation.** The compensation described in Article IV Section B the Agreement is increased by \$2,000,000.00, from \$1,000,000.00 to a total amount not to exceed \$3,000,000.00.
3. **Living Wage.** Article VIII is deleted in its entirety and replaced with the following:

ARTICLE VIII - LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Amendment, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. **Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

A. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

B. **Reporting.** On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

C. **Compliance Monitoring.** Covered Employers under this Amendment are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to

engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

D. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Amendment, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

4. **Additional Miscellaneous Provisions.** The following terms and conditions are added to the Agreement:

Article XVI - Force Majeure

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

Article XVII - Assignment

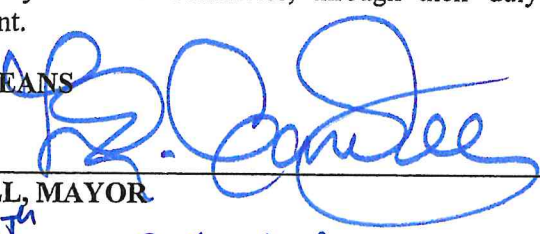
- A. Neither a Contractor nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council.
 - B. A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Contractor or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Contractor or subcontractor that exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the Contractor or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Contractor or subcontractor exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.
5. **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.
6. **Timely Documentation.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.
7. **Convicted Felon Statement.** The Contractor swears that it complies with City Code Section 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.
8. **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.
9. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

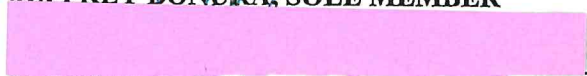
Executed on this 12th of September, 2023

FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Andrew Gregorich

BAROWKA AND BONURA ENGINEERS AND CONSULTANTS, L.L.C.

BY: 
JEFFREY BONURA, SOLE MEMBER


FEDERAL TAX I.D.