

AMENDMENT NO. 4 TO PROFESSIONAL SERVICES AGREEMENT**BETWEEN****THE CITY OF NEW ORLEANS,****NEW ORLEANS BUILDING CORPORATION,****AND****DANA BROWN & ASSOCIATES, INC.**

THIS FOURTH AMENDMENT (the “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 each referred to as a “Party,” and collectively, as the “Parties.” The Amendment is effective as of October 12, 2020 (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”);

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, on June 29, 2020, the City, NOBC, and the Consultant entered into Amendment No. 3 to extend the term and increase the compensation under the Agreement; and

WHEREAS, the City, NOBC, and the Consultant, each having the authority to do so, desire to enter this Amendment to extend the term of the Agreement;

NOW THEREFORE, for good and valuable consideration, the City, NOBC, 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 one year from the Effective Date through October 11, 2021.

2. **Compensation.** The compensation described in Article V and VI of the Agreement is unchanged by this Amendment, and remains at a total amount not to exceed \$1,050,444.48.

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

Remove Article XXVIII and the unnumbered paragraph under Article 3 in Amendment No. 3 titled "Living Wages" and replace with the following Article:

ARTICLE - 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 Consultant 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. **Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Consultant shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Consultant acknowledges and agrees that the Living Wage may be increased during the term of the Amendment. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of the preceding year, and thereafter on an annual basis.

E. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Consultant, 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.

F. **Reporting.** On or before January 31st and upon request by the City, the Consultant 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

G. 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 Consultant 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 Consultant 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 Consultant, payroll records and employee paychecks; and (ii) that the City may audit such records of the Consultant as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Consultant 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.

The following terms and conditions are added to the Agreement:

Article - 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 Consultant 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 Consultant 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 Consultant 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.

4. Convicted Felon Statement. The Consultant swears that it complies with City Code Section 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

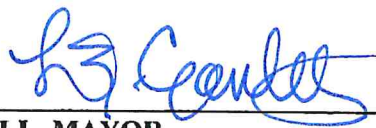
created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Amendment.

[SIGNATURES CONTAINED ON NEXT PAGE]

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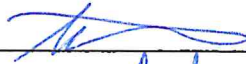
IN WITNESS WHEREOF, the City, NOBC, and the Consultant, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 13TH of NOVEMBER, 2020

FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Andrew Gregorian

NEW ORLEANS BUILDING CORPORATION

BY: 
CYNTHIA M. CONNICK, CHIEF EXECUTIVE OFFICER

DANA BROWN AND ASSOCIATES, INC.

BY: 
DANA NUNEZ BROWN, PRESIDENT

45-2831483

FEDERAL TAX I.D.