

K20-698

AMENDMENT NO. 3 TO THE CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
ADVANCED ENVIRONMENTAL CONSULTING, INC. AND HAMP'S ENTERPRISES,
INC., A JOINT VENTURE
AND
RIVER BIRCH, LLC
HIGGINS GATE WASTE/DEBRIS REMOVAL

THIS THIRD AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), Advanced Environmental Consulting, Inc. and Hamp's Enterprises, Inc., a Joint Venture, represented by Charlie Hampton, Managing Member ("Hamp's"), and River Birch, LLC, represented by Albert J. Ward, Jr., President ("River Birch"). Hamp's and River Birch may sometimes collectively be referred to as the "Contractor". The City, Hamp's, and River Birch may sometimes be collectively referred to as the "Parties". The Amendment is effective as of the date of execution by the City (the "Effective Date").

RECITALS

WHEREAS, the City and Hamp's are parties to a contract dated May 8, 2017 (the "Contract") for Hamp's to provide clearance and disposal services at the site formally known as "Higgins Gate Apartments" (the "Work") to the City;

WHEREAS, on January 31, 2020, the City and Hamp's amended the Contract for the first time to extend its term for continuity of services and to modify the payment terms;

WHEREAS, on April 27, 2020 the City and Hamp's amended the Contract for the second time, to add River Birch, LLC as a party to the Contract, as well as, to extend its term for continuity of services and to modify the payment terms;

WHEREAS, the City, Hamp's, and River Birch now desire to enter into this Amendment to increase maximum compensation;

NOW THEREFORE, the City, Hamp's, and River Birch agree as follows:

1. **COMPENSATION:** The compensation is increased by \$200,000.00 to a new maximum aggregate amount payable by the City under this Agreement of **\$800,000.00**.

2. **ADDITIONAL PROVISIONS:**

A. **Cost Recovery.** The following is added to the Agreement as Article X, Section W:

W. 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.

B. **Living Wage.** The following is added to the Agreement as Article X, Section X:

X. Living Wage.

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

2. **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:

a. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("Living Wage");

b. 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

c. 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.

3. **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 Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

4. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. 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.

5. 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.

6. 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

7. Compliance Monitoring. Covered Employers under this Agreement 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.

8. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, 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.

C. Force Majeure. The following is added to the Agreement as Article X, Section Y:

Y. 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.

3. CONVICTED FELON STATEMENT: The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding 5 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.

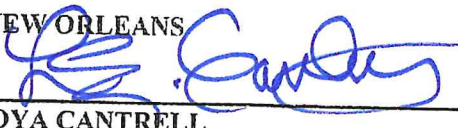
4. NON-SOLICITATION STATEMENT: The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment.

5. PRIOR TERMS BINDING: Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.

6. **ELECTRONIC SIGNATURE AND DELIVERY:** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to the 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.

IN WITNESS WHEREOF, the City, Hamp's, and River Birch, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL,
MAYOR

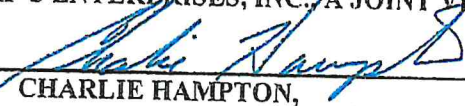
Executed on this 17th of September, 2020.

FORM AND LEGALITY APPROVED:
Law Department

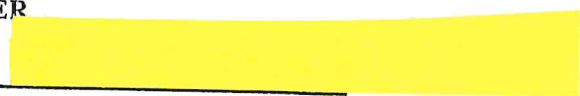
By: 

Printed Name: Andrew Gregorian

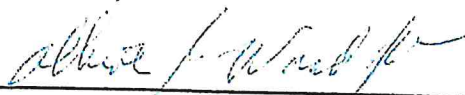
ADVANCED ENVIRONMENTAL CONSULTING, INC. AND
HAMP'S ENTERPRISES, INC., A JOINT VENTURE

BY:  9/2/2020

CHARLIE HAMPTON,
MANAGING MEMBER

FEDERAL TAX I.D. 

RIVER BIRCH, LLC

BY: 

ALBERT J. WARD, JR.,
PRESIDENT

FEDERAL TAX I.D. _____