

K22-183

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

ARBOR E&T, LLC

D/B/A

EQUUS WORKFORCE SOLUTIONS

RFP NO. 1025

THIS FIRST AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Arbor E&T, LLC d/b/a/ Equus Workforce Solutions, represented by Mark Douglass, President (the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**”. The Amendment is effective as of the date of January 17, 2022, execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on February 10, 2021, the City issued a Request for Proposals, RFP No. 1025, seeking qualified entities to provide professional services including One-Stop Operator and WIOA Service Provider for the JOB1 Business and Career Solutions Center; and

WHEREAS, the Contractor submitted a proposal for RFP No. 1025, and the City has selected the Contractor to perform the professional services described in the RFP;

WHEREAS, the Workforce Innovation and Opportunity Act of 2014 (“**WIOA**” or the “**Act**”) was enacted to provide workforce development employment and training services to employers, job seekers, and underemployed workers through a coordinated and integrated network of workforce partners linked with education and economic development;

WHEREAS, the Governor of the State of Louisiana has designated the Parish of Orleans, City of New Orleans as a local Workforce Development Area pursuant to the Act;

WHEREAS, the Workforce Innovation and Opportunity Act establishes the local Workforce Development Board to set policies for the local workforce system, and in partnership with the City’s Chief elected Official, to manage and oversee the local workforce development system;

WHEREAS, the local Workforce Development Board (the New Orleans Workforce Development Board, (“**NOWDB**” or “**WDB**”) has established priorities and service elements for a more coordinated and integrated workforce development system among a range of workforce
Page 2 of 22 Professional Services Agreement between The City of New Orleans and Arbor E&T, LLC, d/b/a Equus Workforce Solutions RFP No. 1025; K21-1117 – BRASS 2968 partners delivering services focused at the JOB1 Business and Career Solutions Center (“**American Job Center**” or “**One-Stop Career Center**”);

WHEREAS, all partners engaged in the local workforce development system envisioned by the NOWDB are expected to remain flexible, adaptive, innovative, and to collaborate to ensure the system is responsive, comprehensive, and ready to meet the needs of employers, workers, and job seekers in the local economy;

WHEREAS, the City, through its Office of Workforce Development and the Workforce Development Board, has been allocated funding for the provision of WIOA Adult, WIOA Dislocated Worker, and WIOA Youth activities and services pursuant to the Act;

WHEREAS the City, through its Office of Workforce Development and the Workforce Development Board, periodically receives additional grant awards from public and private agencies, organizations, foundations, associations, and others to research, design, implement, monitor, or otherwise provide workforce development programs and services to the general public or target populations pursuant to the grant and contractual agreements

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to provide additional funding to increase the compensation

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

1. **Compensation.** The compensation described in Article IV Section A (1) of the Agreement is increased by \$4,204,555.57 (CAREERS Grant \$2,888,416.56; Hurricane Ida Grant \$1,248,139.01; and NOLA Summer \$68,000) to a total amount not to exceed \$10,864,558.70.

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

DECLARED DISASTER

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. Purchase Order. Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

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.

ARTICLE IX – HIRENOLA PROGRAM

The Contractor agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Contractor fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

3. **Change Order Recordation.** The Contractor will perform any applicable recordation requirements set forth in La. R.S. 38:2192 and La. R.S. 38:2222, including without limitation the payment of any associated costs. The Contractor will provide the City with a copy of each recordation within 30 days after approval of the associated plan change or amendment.

4. **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.

5. **Conflict Of Interest.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

6. **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 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.

7. **Employee Verification.** The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. The Contractor acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

8. **Ownership Interest Disclosure.** The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

9. **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.

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

11. **Subcontractor Reporting.** The Contractor shall provide a list of all persons, natural or artificial, who are retained by the Contractor at the time of the Agreement’s execution and who are expected to perform work as subcontractors in connection with the Contractor’s work for the city. In regard to any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining said subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after 30 days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

12. **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.

13. **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.

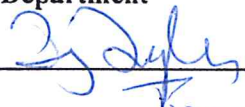
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 28 of MARCH, 2022

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyle

ARBOR E&T, LLC D/B/A EQUUS WORKFORCE SOLUTIONS

BY: 
MARK DOUGLASS, PRESIDENT

61-0875371 (46-0508470)

FEDERAL TAX I.D.