

K21-589

THIRD AMENDMENT TO THE CONTRACT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

BATTURE, LLC

RFQ NO. 500C-02348

ST. ANTHONY GREEN STREETS

THIS THIRD AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Batture, LLC, represented by Jennifer Snape, P.E., Principal (the “**Contractor**”). The City and the Contractor are sometimes collectively referred to as the “**Parties.**” The Amendment is effective upon execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, on February 26, 2018, the City issued Request for Qualifications No. 500C-02348 seeking qualified persons to provide professional design, engineering, and construction management services for resilience, stormwater management, and/or green infrastructure (the “**RFQ**”);

WHEREAS, the Contractor submitted a proposal dated April 4, 2018, and the City selected the Contractor to perform the professional services described in the RFQ;

WHEREAS, the City and the Contractor entered into a Professional Service Agreement on April 26, 2018 (the “**Agreement**”);

WHEREAS, the City and the Contractor entered into the First Amendment, effective as of April 26, 2019, to extend the contract for one year, add exhibit F, and update language provisions;

WHEREAS, the City and the Contractor entered into the Second Amendment effective as of April 26, 2020, to extend the contract for one year; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term for continuity of services, increase compensation and scope, update and add terms and provisions as follows;

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

- 1. Extension.** In accordance with Article VI, sub-section 6, of the Agreement, the term of the Agreement is extended for one year, from the Effective Date through April 25, 2022.

2. **Increased Funding.** The budget for Basic Services is increased by \$849,730.00. This change increases the Basic Services total to \$1,942,646.00. The budget for Topographic Survey is increased by \$73,660.00 to \$146,495.00. This change increases the Total Additional Services total by \$73,600.00 to \$621,742.00.

3. **Updated Language.** The language of the specified Articles shall be updated to read as follows:

A. In Article V.A.1., the language of V.A.1.a. shall be deleted and replaced with the following:

a. The Budget for construction as established by the Owner is \$24,736,894.14. The fee for Basic Services is \$1,942,646.00.

B. In Article V.A.1., the language of V.A.1.b. shall be deleted and replaced with the following:

A. Included in this agreement are additional services for Scoping, Community Engagement, Topographic Survey, Geotechnical Services, Benefit Cost Analysis, Hydrologic Modeling, and Environmental Services. The total not to exceed amount for these Total Additional Services is \$621,742.00.

C. In Article V, Section B, the language of this section shall be deleted and replaced with the following:

Partial payments to the Consultant for services rendered will be made by the Owner based upon the percentage of completion of services for each service as shown in the reports of Project progress submitted to the Owner by the Consultant. The reports of progress shall show detail the status of the services, be subdivided appropriately with the estimated percentage of completion for each service, and be on a form and with a division of items as approved by the Owner. The invoice shall also show the total of previous payments on account of this Agreement and the amount due payable as of the date of the current invoice. Consultant shall provide satisfactory documentation of services rendered, including but not limited to sign in sheets for community engagement meeting; copies of postcards, flyers, or brochures distributed for community engagement; draft and final topographic survey plans; draft and final analysis of benefit-cost ratio; supporting maps or graphics of area benefits; and charts and calculations of area benefits. The total not to exceed amount for these services is \$621,742.00.

D. In Article XXXIV, Section L, the language of this section shall be deleted in its entirety and replaced with:

The "Special Conditions for HUD Contracts," attached as Exhibit E to this Agreement are expressly incorporated into the Agreement.

E. The Parties acknowledge that under federal regulations, Batture is a Contractor, and all instances of the term, “Consultant,” shall be changed to, “Contractor.”

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

A. Article - Living Wages

A. 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.

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. 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/>.

D. 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.

E. 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.

F. 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

G. 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.

H. 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.

B. 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 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.

C. Article – 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.

D. Article – Invoices.

1. The Contractor 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 the following information:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or BRASS Number issued by the City (*Mk18-664*);
- e. Name of the City Department to be invoiced (*i.e.*, PDU);

- f. Description of the Services completed; and
- g. FEMA or HUD Project Number (*i.e.*, PW#), if applicable.

2. Invoices will be processed in accordance with Article III Section B of the Agreement.

3. All invoices must be signed by an authorized representative of the Contractor 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.

E. Article - 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.

- 5. **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.
- 6. **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.
- 7. **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.
- 8. **Electronic Signature and Delivery.** The City and the Contractor 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.

[The remainder of this page is intentionally left blank.]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 20th of April, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

BATTURE, LLC

BY: 
JENNIFER SNAPE, P.E.

46-5677826
FEDERAL TAX I.D.