

✓23-1341

**SECOND AMENDMENT TO AND ASSIGNMENT OF CONTRACT**

**BY AND BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**JDW3, LLC (f.k.a. Waggonner & Ball, LLC),  
a Louisiana limited liability company**

**HEREIN ASSIGNED TO**

**WAGGONNER & BALL, LLC (f.k.a. MN Merger Sub I, LLC),  
a California limited liability company.**

**PLANNING, DESIGN, AND ANALYSIS OF  
GENTILLY RECOVERY DISTRICT  
RFP NO. 2285-01890**

**THIS SECOND AMENDMENT AND ASSIGNMENT** (the “**Amendment**”) is made and entered into by and between the City of New Orleans, herein represented by LaToya Cantrell, Mayor (the “**City**”), and Waggonner & Ball, LLC (f.k.a. MN Merger Sub I, LLC), a California limited liability company (“**W&B**”), which is a subsidiary of Moffatt & Nichol, a California corporation (“**M&N**”), herein represented by Andrew J. Sternad, Business Unit Leader, who are sometimes each referred to in this Amendment as a “**Party**,” and collectively, as the “**Parties**.” This Amendment is effective as of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on May 4, 2021, the City entered into a Professional Services Agreement with JDW3, LLC (f.k.a. Waggonner & Ball, LLC), a Louisiana limited liability company (“**JDW3**”) to perform associated planning, design, and analysis services relevant to the projects developed for the application (the “**Agreement**”);

**WHEREAS**, the Parties entered into that First Amendment to extend for time for continuity of services and update essential terms and conditions;

**WHEREAS**, on December 29, 2022, JDW3 agreed to sell and assign to W&B, and W&B agreed to purchase and assume from JDW3, JDW3’s assets, which include JDW3’s interest in the Agreement (the “**Transaction**”);

**WHEREAS**, Article XXXVI, Section B, of the Agreement permits an assignment by JDW3 with the City’s written permission, which this Amendment, upon full execution, constitutes; and

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WHEREAS, in connection with the closing of the Transaction on December 30, 2022 (the “Closing”), W&B agrees to assume all of JDW3’s rights and obligations under the Agreement accruing on and after the Closing.

NOW THEREFORE, for good and valuable consideration, the City and W&B amend the Agreement as follows:

1. **Consent.** The City approves the transfer of rights and obligations accruing on and after the Closing of the Transaction under the Agreement to W&B, and the City accepts and acknowledges W&B as “Contractor” in the Agreement.
2. **Assignment.** On the Effective Date, JDW3 assigns any and all of its rights and obligations in the Agreement accruing on and after the Closing of the Transaction to W&B (the “Assignment”).
3. **JDW3’s Liabilities Prior to the Assignment.** W&B agrees to defend, indemnify, and hold harmless the City for any and all liability, claims, demands, suits, judgments, or costs for damages because of personal injury (including death) or property damage sustained by any person or entity caused by, arising out of, or directly related to the acts or omissions of JDW3, its agents, servants, or employees while engaged in or about or in connection with the discharge or performance of JDW3’s obligations pursuant to the Agreement prior to the Assignment.
4. **W&B’s Rights and Obligations After the Assignment.** On the Effective Date, W&B undertakes, assumes, and accepts all contract rights and obligations accruing on and after the Closing of the Transaction as “Contractor” in the Agreement substituting itself as Contractor, and binding itself to all the terms and conditions as though originally a party to the Agreement.
5. **Extension.** In accordance with Article VI(B) of the Agreement, the term is extended for continuity of services for one year, from January 1, 2024 - December 31, 2024.
6. **Convicted Felon Statement.** W&B swears that it complies with City Code § 2-8(c). No W&B 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. **Non-Solicitation Statement:** W&B 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. W&B 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.
8. **Non-Waiver:** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.
9. **Notice.**
  - A. **In general.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be

given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Project Delivery Unit  
City of New Orleans  
1300 Perdido Street, Suite 6E03  
New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To W&B:

Waggonner & Ball, LLC  
4225 E. Conant St.  
Long Beach, CA 90808  
Attention: Eric Nichol

- B. **Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.
- C. **Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

(SIGNATURES ON THE FOLLOWING PAGES)

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City and W&B, through their duly authorized representatives, execute this Amendment and Assignment.

CITY OF NEW ORLEANS

BY:   
LATOYA CANTRELL, MAYOR

Executed on this 28<sup>th</sup> day of December, 2023

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: BYRNE N. SHERWOOD

WAGGONNER & BALL, LLC,  
a California limited liability company

BY:   
NAME: ANDREW J. STERNAD  
TITLE: BUSINESS UNIT LEADER

TAX I.D. NUMBER: 