

K18-607

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

WAGGONNER & BALL, LLC, F/K/A WAGGONNER & BALL, ARCHITECTS, A PROFESSIONAL CORPORATION

THIS FIRST AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the "City"), and Waggonner & Ball, LLC, f/k/a Waggonner & Ball, Architects, APC, represented by J. David Waggonner III, President (the "Consultant"). The City and the Consultant are sometimes collectively referred to as the "Parties." The Amendment is effective of August 31, 2016 (the "Effective Date").

RECITALS

WHEREAS, on August 31, 2015, the City and the Consultant entered into a professional services agreement (the "Agreement") for the development of a grant application to the United States Department of Housing and Urban Development for the National Disaster Resilience Competition and to perform associated planning, design, and analysis services relevant to the projects developed for the application; and WHEREAS, in 2016, the Consultant changed its name and is now known as Waggonner & Ball, LLC; and

WHEREAS, the Consultant and the City acknowledged that if the City were awarded the National Disaster Resilience Competition funding, the Parties would execute an amendment to the original Agreement to implement the design strategy provided by the Consultant; and

WHEREAS, the City and the Consultant, each having the authority to do so, desire to enter this Amendment for continuity of services.

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

1. Extension. In accordance with Article V, Section B of the Agreement, the term is extended for an additional 3 years from the Effective Date through August 31, 2019.

2. Scope of Services. The Consultant agrees to provide the City with the services, which are within the scope of the Agreement under Article I, Paragraph A, as more fully described in "Exhibit A" to this Amendment.

3. Compensation. The compensation described in Article IV, Section B of the Agreement is increased by \$2,396,605.25 to a total amount not to exceed \$2,646,605.25. The increased amount payable for the services to be provided under this Amendment is broken down as follows:

- a. \$38,001.40 for the execution of a City capacity-building workshop;
- b. \$541,431.00 for groundwater testing and monitoring services; and
- c. \$1,817,172.85 for Gentilly Resilience District planning services.

4. **DBE Provision.** Article VI of the Agreement relating to the DBE program is substituted by the following:

ARTICLE VI - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. In General. The Consultant agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Consultant’ use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Consultant or DBE Entities.

C. Cooperation. The Consultant shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Consultant’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Consultant shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Consultant.
 - b. The Consultant shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Consultant does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Consultant is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.
 - a. The Consultant shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Consultant. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Consultant may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
 - a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

- a. for a reason beyond the Consultant's control, the Consultant is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Consultant must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Consultant shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
- b. the Consultant reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Consultant shall use and document "Good Faith Efforts" to achieve a

reasonable amount of DBE participation on the remaining work on the Agreement.

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

ARTICLE XI - PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the Consultant 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 Consultant fails to perform according to the Agreement, the City will notify the Consultant. If there is a continued lack of performance after notification, the City may declare the Consultant 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 Consultant for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Consultant.

ARTICLE XII - LIVING WAGES

To the fullest extent permitted by law, the Consultant agrees to abide by City Code sections 70-801, *et seq.*, which requires payment of a wage to covered employees equal to the amounts defined in the Code (“**Living Wage**”). If the Consultant fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

6. **Convicted Felon Statement.** The Consultant swears that it complies with City Code § 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.

7. **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.

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

9. **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]

[The remainder of this page is intentionally left blank]

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

CITY OF NEW ORLEANS

BY: 

MITCHELL J. LANDRIEU, MAYOR

Executed on this 26TH of April, 2018.

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: _____

WAGGONNER & BALL, LLC, f/k/a WAGGONNER & BALL,
ARCHITECTS, A PROFESSIONAL CORPORATION

BY: 

J. DAVID WAGGONNER III, PRESIDENT

[EXHIBIT A CONTAINED ON NEXT PAGE(S)]

[The remainder of this page is intentionally left blank]

**EXHIBIT A TO AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
WAGGONNER & BALL, LLC, F/K/A WAGGONNER & BALL, ARCHITECTS, A
PROFESSIONAL CORPORATION**

SCOPE OF SERVICES

**Gentilly Resilience District: District-Scale Planning Phase
Scope Outline**

The aim of this phase of work is to advance the vision for the Gentilly Resilience District (GRD), building from the City's application to HUD's National Disaster Resilience Competition. The Gentilly Resilience District will be the first substantial implementation of the City's Resilience Strategy and Urban Water Plan. The Waggonner and Ball (WBAE) team will be responsible for the production and development of communications materials, technical advice, creative community engagement techniques, guiding documents, and professional design and engineering charrettes to advance the implementation of the GRD from the district-level scale.

1. Develop Communication Materials for clear & direct messaging

- Update and create new diagrams, drawings, and renderings which balance design aspiration with sensitivity to local conditions and consider alternate modes of representation in addition to traditional design renderings
- Support content development for digital presence across nola.gov and social media platforms, in collaboration with GCR, Inc
- Design GRD identity materials for current & future projects, carefully crafted to support inclusive design and public education at all scales of this project

Deliverables:

- 3 iterations of GRD identity package (diagrams, info-graphics, drawings, renderings) to be used for publications and outreach campaign
- 3 iterations of condensed handout (graphics w/ key bullet points), in collaboration with GCR, Inc.

2. Advise the City of New Orleans on water storage targets, stormwater management scenarios, and other technical standards for district project performance

- Update water storage goals for the GRD, taking into consideration the Sewerage & Water Board's ongoing efforts to update data
- Define "design storms"
- Model stormwater scenarios for selected design storms:
 1. Impact of NDR projects (update)
 2. Impact of community adaptation strategies
 3. Impact of stormwater BMPs in expanded street networks (with sub-scenarios as needed)
 4. Impact of Urban Water Plan's full implementation, advanced for Gentilly area

- Define operating surface & ground water levels and ranges with intakes, outputs, and flows
- Perform district-wide water management systems analysis to set goals for GRD project complementarity
- Support BCA updates where applicable and needed

Deliverables:

- Updated water assignments for each drainage basin and water storage goals for each GRD project
- Groundwater and surface water management constraints and goals for each drainage basin and applicable GRD projects
- Document with defined and illustrated stormwater scenarios and SWMM model results
- Recommendations on integration of GRD projects into district-wide water management systems

3. Lead content and creative development of design and engineering workshops

- In collaboration with the City of New Orleans project team and GCR, Inc., develop content and lead charrettes with design and engineering teams for GRD projects
- Focus on urban design and engineering coordination across GRD projects and their contribution to district performance and identity

Deliverables:

- Quarterly "all-hands" design and engineering coordination workshops. (First year only included in fee.)
- Occasional project-specific design and engineering conferences with City of New Orleans project teams. (12 conferences included in fee.)

4. Develop a series of Story Maps to establish a basis for design

- Web-based document, approachable and available to all
- Focus on individual resident experiences
- Emphasize the relationship between the underlying morphology of the land (Gentilly Ridge/Bayou) and present-day patterns of development
- Working list of layers/narratives: workforce, social vulnerability, transit, traffic, energy, waste, street typologies, real estate, land use, neighborhood analyses, drainage basins, topography, open space, public space, drainage system
- Incorporate existing maps derived from the Trust for Public Land's Climate Smart Cities Mapping Portal developed for the City of New Orleans

Deliverable:

- Web-based document including layers of information described above

5. Creative Engagement Process

- The WBAE team will enhance the community engagement process with the design and execution of creative engagement techniques, in collaboration with the City of New Orleans project team
- Place-based public events/art installations. There are potentially two types:
 - a. "Network" projects seek to educate by making hidden things visible.
 - i. Conceived and installed by artist/designer teams
 - ii. Useful to structure tours and walks
 - iii. Example site: the Gentilly Ridge, a stretch of relatively high ground built up by sediment from the now-vanished Bayou Gentilly.
 - b. "Place" projects seek to inhabit specific places to set up productive conversations. These will be most effective if they incorporate a public event, neighborhood tour, and/or community workshop.
 - i. Site selection workshop with stakeholders, coordinated with flagship project sites and the neighborhoods that will see an immediate impact.
 - ii. Set loose parameters and let artist/designer teams lead citizens in programming and design.
 - iii. Example site: Orleans Avenue Canal at I-610, where an existing gap in the flood wall offers a glimpse of a potential urban waterfront.
 - iv. Example site: Elysian Fields neutral ground, an underutilized public space.
- Support content development of City's non-digital presence with newspaper "broadsheets" (following WBAE's example in Bridgeport, CT – see resilientbridgeport.com) or similar documents. As a partner publication to the web-based Story Maps, the broadsheets can address a wide variety of issues using non-map forms of representation in the form of a free newspaper.
- Develop a framework describing creative engagement for future NDRC-funded projects across the GRD.

Deliverables:

- 3 newspaper broadsheets or similar
- 3-5 public events (pending further discussions with Studio O)

6. Develop a Vision & Implementation Document to guide future implementation of Gentilly and other Resilience Districts

- WBAE will be responsible for content development
- Identify and organize stakeholders into working groups clustered around themes:
 - a. Infrastructure & Networks

- b. Inclusive Growth
- c. Mobility
- d. Public Health
- e. Education
- f. Culture & Faith
- Outcomes for working groups:
 - a. What's missing? (Identify opportunities for programs, policies, and projects not already included in the GRD)
 - b. What's in the way? (Identify potential roadblocks to implementation)
 - c. Who will do it? (Identify potential partnerships)
 - d. What's next? (First steps for implementation)
- Data collection phase with stakeholders to collect information not already mapped and to build awareness of work already underway or in planning stages
- Bring the expertise of the working groups to bear on the evolving design vision in a summary of working group outcomes & opportunities.
- Establish goals and objectives from stormwater scenario testing & analysis.
- Consider "ground-truthing" by I See Change as a mechanism to check stormwater models against hyper-local observation.
- Define metrics for success, building from the four performance metrics in the City's NDRC application: Resilience Value, Environmental Value, Social Value, Economic Revitalization.
- Compile lessons learned from Mirabeau Water Gardens, the first urban water project to be implemented in the GRD, in order to guide future design and implementation.
- Establish a holistic district vision to ensure that separating future work into discrete projects does not compromise the "big idea" of the original vision set forth in the NDRC application.
 - Consider multiple audiences: citizens, schools, design professionals, elected officials, and City departments.
 - Potential deliverables may include non-traditional formats; ie, a "welcome aboard" guide for citizens to educate and encourage participation.

Deliverables:

- 1 kickoff convening meeting; 12 half-day stakeholder workshops; 1 call-to-action convening meeting
- Meeting materials and creative activities for participants
- Vision & Implementation document outlining district-wide goals and objectives around each of the six themes described above, working group outcomes and opportunities identified, metrics for success, potential partnerships, roadblocks and next steps.
- Project design guidelines based on lessons learned from the Mirabeau Water Garden project.
- "Citizens Guide to the GRD" document or similar

[END OF AMENDMENT]