

APPROVED AS TO FORM


Office of the City Attorney

Prepared By: GDW/rd
Requested: Projects Cmte
Presentation on: 07/12/2016
Suspension of Rules: YES

RESOLUTION

RESOLUTION AUTHORIZING AMENDMENT NO. 2 TO THE CONTRACT
BETWEEN THE CITY OF TUSCALOOSA AND WALKER ASSOCIATES, INC. FOR
PROVIDING PROFESSIONAL CONSULTING AND RELATED SERVICES FOR HUD
DISASTER RELIEF MONEY IN TUSCALOOSA RECOVERY AREA
(A13-0622/A15-0636)

BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA as follows:

That the Mayor be, and he is hereby, authorized to execute Amendment No. 2 to the contract between the City of Tuscaloosa and the professional engineering firm of Walker Associates, Inc. for providing professional consulting and related services for Planning and Administration of HUD Disaster Relief Money in Tuscaloosa Recovery Area, with an increase in the total compensation amount from \$1,600,375 to \$2,025,375 for additional services associated with ongoing projects, by and as an act for and on behalf of the City of Tuscaloosa, and the City Clerk is authorized to attest the same.

FUNDING REQUIRED: Yes No

By: _____
Finance Director

COUNCIL ACTION

Resolution ✓
Ordinance _____
Introduced _____
Passed 7-12-16
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN
THE CITY OF TUSCALOOSA AND WALKER ASSOCIATES, INC.
[AGREEMENT TO PROVIDE PROFESSIONAL CONSULTING AND RELATED
SERVICES FOR HUD DISASTER RELIEF MONEY IN
TUSCALOOSA RECOVERY AREA]
(A13-0622/A15-0636)**

THIS SECOND AMENDMENT to that certain agreement made and entered into by and between the parties on the 1st day of August 2013, is made and entered into by and between WALKER ASSOCIATES, INC., hereinafter referred to as the "Consultant" and the CITY OF TUSCALOOSA, a Municipal Corporation, hereinafter referred to as the "City." On this the 18th day of July, 2016, as follows:

W-I-T-N-E-S-S-E-T-H:

The City and the Consultant do hereby enter into this second amendment to the contract between the parties on the above date, for and in consideration of the mutual benefits moving each to the other as more particularly set forth herein as follows:

SECTION ONE. That Section III, "Compensation," be amended to increase the total maximum compensation amount from One-Million Six-Hundred Thousand and Three-Hundred Seventy-Five Dollars and Zero Cents (\$1,600,375.00) to Two-Million Twenty-Five Thousand and Three-Hundred Seventy-Five Dollars and Zero Cents (\$2,025,375.00). Of this amount, twenty-five thousand (\$25,000) is to be used for SRF administration which is to be paid from the WSRFFI. Also see attached Exhibit "A" being a letter dated July 5, 2016 from Consultant giving a more detailed breakdown of potential services for this contract amendment and Exhibit "B" being an Hourly Rate Schedule for 2016.

SECTION TWO. MISCELLANEOUS:

Capacity: Each Party to this Agreement represents and warrants to the other as follows:

- A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- B. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

- C. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.
- D. That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.
- E. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.
- F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.
- G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.
- H. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.
- I. Each party represents and warrants that the execution and delivery of this agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time, or both) a default under the laws of the State of Alabama, any resolution, agreement, or other contract agreement, or instrument to which a party is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the party.
- J. This agreement constitutes the legal, valid and binding obligation of each party and is enforceable against each party in accordance with its terms, except in so far as the enforceability thereof may be limited by:
 - (1) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights

- (2) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
- K. Neither party will enter into any agreement to do anything prohibited in this agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.
- L. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

City Logo and Name: The Consultant shall not use the City of Tuscaloosa's name or insignia or logo in any magazine, trade paper, newspaper, advertisement or other medium without first obtaining the written consent of the Owner.

Waiver: Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

Prohibition on Assignment and Delegation: No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

Final Integration: This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

Non Discrimination: The Consultant agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The Contractor shall fully comply with the Americans with Disabilities Act, the Fair Labor Standards Act and all other applicable laws and regulations).

Fines and Penalties: The Consultant shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Consultant which are related to the Consultant's operations. The Owner shall deduct the amount of the levied fine or penalty from the contract amount.

Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

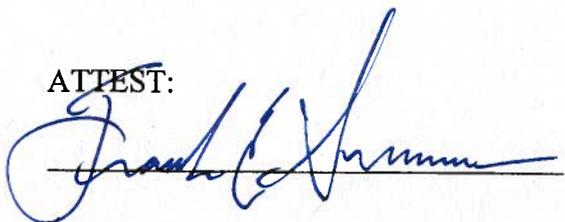
Severability. Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, but this agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

COMPLIANCE WITH IMMIGRATION LAW

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment Agreement on the day and year first set forth above.

ATTEST:



WALKER ASSOCIATES, INC.,

BY:



CITY OF TUSCALOOSA, A Municipal Corporation

BY: Walter Maddox
Mayor Walter Maddox

ATTEST:

[Signature]
City Clerk

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, Carolyn S. Duncan, a Notary Public in and for said State at Large, hereby certify that Jason C. Walker, who is named as Engineer, is signed to the foregoing document, and,

- Who is known to me, or
- Whose identity I proved on the basis of _____, or
- Whose identity I proved on the oath/affirmation of _____, a creditable witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 18th day of July, 2016

Carolyn S. Duncan
Notary Public

My Commission Expires: 6/16/2018



STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 13th day of July, 2016

Vickie Hilliland
Notary Public

My Commission Expires: 2/3/19

July 5, 2016

Ms. Glenda Webb, City Attorney
City of Tuscaloosa
2201 University Boulevard
Tuscaloosa, Alabama 35401

RE: Contract Amendment (City No. A13-0622)
HUD Disaster Recovery Planning and Administration Services

Dear Ms. Webb:

We are writing to request a contract amendment associated with ongoing services provided as a part of the above referenced project. As you are aware, this request is based on the work performed to date with numerous tasks, including the recent National Disaster Resilience Competition (NDRC) grant process, application with the USDOT Transportation Investment Generating Economic Recovery (TIGER) grant applications, administration services associated with the ADEM State Revolving Fund (SRF) Loan program, grant support for the recent train station grant proposals, ongoing environmental documentation for infrastructure and commercial revolving loan programs, acquisition support services for DR projects including review appraisals, and numerous other tasks related to subsequent disaster recovery work.

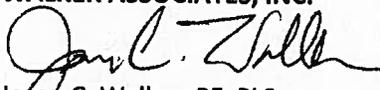
We request an increase in the current not-to-exceed hourly contract amount of \$425,000 and that the attached hourly rate schedule for 2016 be a part of the amended contract. As discussed, the scope of services provided as a part of this contact is highly variable depending on the level of project activity and supplemental assistance that is needed to support and assist City staff. The following is an approximate breakdown of potential services for the contract amendment:

Pending Contract Reimbursements	=	\$120,000
Acquisition Phase Services	=	\$ 40,000
Environmental Documentation	=	\$ 50,000
Engineering Administration (DR & SRF)	=	\$ 70,000
Technology Design / Coordination	=	\$ 70,000
Planning Services	=	\$ 50,000
SRF Administration	=	\$ 25,000

Please let us know if you have any questions regarding this request. We greatly appreciate the opportunity to continue to serve the City with these recovery related services.

Sincerely,

WALKER ASSOCIATES, INC.



Jason C. Walker, PE, PLS

EXHIBIT "A"

2016 RATE SCHEDULE
January 1, 2016

<u>Staff Classification</u>	<u>Rate</u>
Project Manager	\$190.00
Professional Engineer III	\$155.00
Professional Engineer II	\$135.00
Professional Engineer I	\$120.00
Staff Professional II	\$110.00
Staff Professional I	\$ 95.00
Engineering Technician III	\$ 90.00
Engineering Technician II	\$ 70.00
Engineering Technician I	\$ 50.00
Professional Land Surveyor II	\$135.00
Professional Land Surveyor I	\$ 90.00
Survey Technician III	\$ 85.00
Survey Technician II	\$ 75.00
Survey Technician I	\$ 45.00
Clerical	\$ 60.00

Notes:

1. Sub-Consultants billed through Walker Associates shall be subject to an additional 10 percent administrative fee.
2. Hourly rates for technicians and survey crew for holidays, weekends, or work over 40 hours per week shall be 1.3 times the standard unit rates.