

K14-768

**AMENDMENT NO. 3 TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE COUNCIL OF THE CITY OF NEW ORLEANS
AND
HGI CATASTROPHE SERVICES, L.L.C**

THIS AGREEMENT is made and entered into as of the ____ day of July 2014, by and between the City of New Orleans, hereinafter represented by Stacy Head, Council President (hereinafter referred to as "City"), and HGI, Catastrophe Services, L.L.C., (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, pursuant to Motion M-11-336, the City entered into an agreement dated August 24, 2011 by and between the Council of the City of New Orleans and HGI Catastrophe Services, L.L.C. for the purpose of performing property tax appeal hearings, and making recommendations to the Council serving in its capacity as the Board of Review; and

WHEREAS, pursuant to that agreement, thereafter extended, and to facilitate the continuity of services thereunder, the parties desire to extend the agreement from August 15, 2014 through August 15, 2015, authorizing additional funding thereunder; and

WHEREAS, the Council desires to re-engage qualified contractors for the performance of property tax appeal professional services as described in Attachment "A" of the Original Agreement except as otherwise amended herein, and to further extend the Agreement by one (1) year to facilitate the continuity of such services thereunder; and

WHEREAS, all parties to the Agreement, dated August 24, 2011 desire to amend the Agreement in accordance with the terms and conditions set forth therein and have the necessary authority to do so.

THEREFORE IT IS HEREBY AGREED:

1. **TERM:** That the term of the Agreement is hereby extended by one (1) year, through August 14, 2015.
2. **SCOPE OF SERVICES:** That all of the provisions of Attachment "A" of the Agreement shall remain the same and made a part hereof as "Attachment "A" – Amendment 3" with the exception of paragraph 3 of Attachment "A" of said Agreement, which outlines the Scope of Services, and which shall now read as follows: "Begin appeal hearings no later than September 12, 2014, and conclude hearings no later than October 10, 2014."
3. **COMPENSATION:**
 - a. That Attachment "B" of the Agreement and Attachment "B – Amendment 1" of Amendment No. 1 to the Agreement, and Attachment "B – Amendment 2" of Amendment No. 2 are hereby replaced in their entirety by Attachment "B" – Amendment 3, which is attached hereto and made a part hereof. The City shall not be liable for any other costs or expenses paid or incurred by Contractor in the performance of the Services, unless specific exception is provided herein.
 - b. That the maximum amount payable to the Contractor hereunder shall not exceed FIVE HUNDRED FIFTY THOUSAND AND NO/100 (\$550,000.00) DOLLARS.
4. **AUDIT AND OVERSIGHT:** The Contractor agrees to abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Agreement, as amended. In signing this Amendment, the Contractor agrees that he is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a

subpoena.

5. **CONVICTED FELON PROVISION:** The Contractor swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. 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.

6. **NON-SOLICITATION PROVISION:** The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement, or any amendment thereto. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement, or any amendment thereto.

7. **AMENDMENT OF SECTION 9 OF THE ADDITIONAL TERMS AND CONDITIONS ATTACHED AS ATTACHMENT "C" TO THE AGREEMENT:** The City and the Contractor hereby agree to delete and replace Section 9 CANCELLATION of the Agreement's Additional Terms and Conditions with the following 9(a) – (d):

9. TERMINATION.

- a. **Termination for Cause.** The City and the Contractor shall each have the right to terminate the Agreement, as amended, for cause, effective immediately upon giving of written notice to the other party of its intent to terminate and the reasons therefore.
- b. **Termination for Convenience.** The City shall have the right to terminate the Agreement, as amended, without cause by giving the other party written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event the City elects to terminate for convenience, the City shall be obliged to pay Contractor only for the work performed by the Contractor up to and through the date of termination.

- c. Termination for Non-Appropriation. The Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain the Agreement, as amended, without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for the Agreement, as amended.
- d. Survival of Certain Provisions. All representatives and warranties and all responsibilities regarding retention, access and ownership, cooperation with Office of Inspector General investigations, indemnification and payment for services rendered shall survive the termination of the Agreement, as amended, and continue in full force and effect.

8. **ADDITIONAL PROVISIONS:** The City and the Contractor hereby agree to add the following Sections 12 – 29 to the Additional Terms and Conditions attached as Attachment “C” to the Agreement:

- 12. GOVERNING LAW. The Agreement, as amended, shall be construed and enforces with the laws of the State of Louisiana, excepting its conflict of laws provisions.
- 13. RETENTION. The Contractor shall maintain its books and records (in whatever form they may be kept whether written, electronic or other) relating or pertaining to the Agreement, as amended, (including any and all documents and other materials, in whatever form they may be kept which support or underlie those books and records) for the duration of the Agreement and for at least six (6) years following the completion thereof, including any and all renewals and/or extensions thereof. All accounting records shall be maintained in accordance with generally accepted principles and practices. In addition, the Contractor agrees to comply with Louisiana’s public records law (La. Rev. Stat. 44:1 *et seq.*) to the extent applicable.
- 14. RIGHT TO AUDIT; ACCESS. The City and/or its designated representatives shall have the right to audit, inspect and review all such books and records (as defined in Section 13 above), kept by or under the control of the Contractor, including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors and subcontractors. Such books and records shall be made available, upon request, to the City, through its employees, agents’ representatives, contractors or other designees, during normal business hours at the Contractor’s office or place of business. In the event that no such location is available, then such books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location which is convenient for the City.
- 15. AMENDMENT. No amendment of or modification to the Agreement, as amended, shall be valid unless and until executed in writing by the duly

authorized representatives of both parties to the Agreement.

16. NON-EXCLUSIVE. The Agreement, as amended, shall be non-exclusive. Accordingly, the Contractor shall be free to provide services to other clients, and the City shall be free to engage the service of other contractors for the provision of some or all of the work or services set forth in the Agreement, as amended.
17. TERMS BINDING. The terms and conditions of the Agreement, as amended, are binding on any heirs, successors, transferees, and assigns.
18. CONSTRUCTION OF AGREEMENT. Neither party will be deemed to have drafted the Agreement, as amended. The Agreement, as amended, has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Agreement, as amended, shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Agreement, as amended, are provided for convenience only and are not intended to have effect in the construction or interpretation of the Agreement, as amended. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.
19. SEVERABILITY. Should a court of competent jurisdiction find any provision of the Agreement, as amended, to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement, as amended, remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part of the Agreement, as amended.
20. SURVIVAL OF CERTAIN PROVISIONS. All representatives and warranties and all obligations concerning record retention, inspections, audits, ownerships, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of the Agreement, as amended, and continue in full force and effect.
21. NO THIRD PARTY BENEFICIARIES. The Agreement and any and all amendments thereto are entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement, as amended.
22. NON-WAIVER. The failure of either party to insist upon strict compliance with any provision of the Agreement, as amended, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach, shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that

default or breach or any prior contemporaneous or subsequent default or breach.

23. REMEDIES CUMULATIVE. No remedy set forth in the Agreement, as amended, or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.
24. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT. No elected official or employee of the City shall have a financial interest, direct or indirect, in the Agreement, as amended. For purposes of this Section, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render the Agreement, as amended voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to the Agreement, as amended, without regard to Contractor's satisfactory performance of the work thereunder.
25. PROHIBITION ON POLITICAL ACTIVITY. None of the funds, materials, property, or services provided directly or indirectly under the terms of the Agreement, as amended, shall be used in the performance of the Agreement, as amended, for any partisan political activity, or to further the election or defeat any candidate for public office.
26. OWNERSHIP INTEREST DISCLOSURE. The Contractor shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in Contractor and stating that no other person holds an ownership interest in Contractor Via a counter letter. For the purposes hereof, and "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. In Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required, affidavits are submitted.
27. SUBCONTRACTOR REPORTING. Contractor shall provide a list of all persons natural or artificial, who were retained by Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with Contractor's work for the City pursuant to the Agreement, as amended. In regard to any subcontractor proposed to be retained by Contractor to perform work on Agreement with the City, Contractor must provide notice to the City within in 30 days of retaining said subcontractor. If Contractor fails to submit the required lists and notices, the City may, after 30 days' written notice to 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.


28. INCORPORATION INTO SUBCONTACTS. Contractor will incorporate the Additional Terms and Conditions attached to the Agreement and as amended herein into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with such provisions.

29. COMPLETE AGREEMENT. The Contractor specifically acknowledges that in entering into and accepting the Agreement, as amended. The Contractor is relying solely upon the representations and agreements contained in the Agreement, as amended, and no agreements, negotiations and discussion between the parties hereto with regard to the terms, obligations and conditions herein.


9. NON-WAIVER: Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, including, but not limited to, any and all attachments made a part thereof, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have made and executed this agreement effective the day and year first above written:

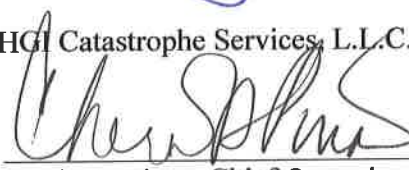
CITY COUNCIL OF CITY OF NEW ORLEANS

BY: 
Stacy Head
City Council President

FORM AND LEGALITY APPROVED:
Law Department

By: 
Name: Julie P. Meyer

HGI Catastrophe Services, L.L.C.

BY: 
Cherie A. Pinac, Chief Operating Officer,
1010 Common St., Ste 2600
New Orleans, LA 70112
Taxpayer ID Number: 74-1780638

ATTACHMENT "A" – AMENDMENT 3

SCOPE OF SERVICES

Contractor agrees to provide the following services:

1. Review all appeals (including residential, commercial, and personal property) submitted to the Board of Review. It is estimated that up to six thousand five hundred (6,500) appeals may be received.
2. Secure hearing examiners, real estate consultants, and/or appraisers as necessary, and other professional staff as may be required in order to conduct the appeal hearings in an efficient manner so as not to place an undue burden on appellants.
3. Begin appeal hearings no later than September 12, 2014, and conclude hearings no later than October 10, 2014.
4. Arrange venue for all appeal hearings, in a location that is accessible by public transportation and is accessible to handicapped persons.
5. Perform data entry; schedule appeal hearings; notify appellants in writing of date, time, and location of hearings, providing notification of the agenda(s) in advance to the Board; and provide schedule in electronic format for posting on Council's website.
6. Provide written summaries of appeal hearings and provide written recommendations to the Board on each appeal, by week, by Wednesday in the week following the week in which the appeals are heard.
7. When possible, schedule and report appeals by assessment district.
8. Appear before the Board to present findings and recommendations.
9. Prepare resolutions for the Board to consider in disposition of appeals (format will be provided).
10. Notify appellants in writing of the Board's action, and provide notice of subsequent rights of appeal if necessary.
11. Provide telephone contact ("help desk") for appellants throughout appeal process.

12. Draft communication and education plan to inform the public of the hearing process.
13. Notify the Orleans Assessor's Office of the hearing schedule and location.
14. Provide data requested by Tax Commission with respect to appeals before the body. Provide information on behalf of the Board of Review to Tax Commission regarding Tax Commission appeals. Provide files to Assessor and property owners with respect to Tax Commissions appeals.

ATTACHMENT "B" – AMENDMENT 3

A. Contractors' Rate Schedule is set forth below:

The Contractor's Rate Schedule is as at a flat fee rate as follows:

1.	0 – 999 appeals	\$255,000
2.	1,000 – 1,499 appeals	\$345,000
3.	1,500 – 1,999 appeals	\$420,000
4.	2,000 – 2,499 appeals	\$465,000
5.	2,500 – 2,999 appeals	\$490,000
6.	3,000 – 3,500 appeals	\$550,000

B. Schedule of invoices: Contractors, in accordance with the provisions of Article III, Section 3 of this Agreement, will submit invoices to the Council monthly.

C. Schedule of payments: Council agrees to pay duly prepared invoices within forty-five (45) days of submission. A retainer of ten percent (10%) of agreed compensation will be withheld to ensure the completion of provisions contained in the Scope of Services, as amended. An initial forty-five percent (45%) of agreed compensation may be invoiced after September 3rd; a second forty-five percent (45%) of agreed compensation may be invoiced after October 1st. The final ten percent (10%) of agreed compensation may be invoiced fifteen (15) days following adoption of appeals by the Board of Review.

D. Subject to the terms of the Agreement, all compensation is subject to the limit of total maximum charges for \$550,000.