

K20-934

AMENDMENT NO. 4 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

HAMMERMAN & GAINER, LLC

PROPERTY TAX ASSESSMENT APPEAL HEARINGS

MANAGEMENT CONTRACTS

THIS FOURTH AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by Helena Moreno, Council President (the "City"), and Hammerman & Gainer, LLC, (sometimes referred to as Hammerman & Gainer, Inc.) represented by Christopher J. Oney, Manager (the "Contractor"). The City and the Contractor are sometimes each referred to as a "Party," and collectively, as the "Parties." The Amendment is effective as of September 6, 2020 (the "Effective Date").

RECITALS

WHEREAS, on September 6, 2016, the City and the Contractor entered into a Professional Services Agreement for Property Tax Assessment Appeal Hearings Management Services in association with the New Orleans City Council acting as the Orleans Parish Review Board, which was amended by that certain Amendment No. 1 effective September 6, 2017, that certain Amendment No. 2 effective as of September 6, 2018, and that certain Amendment No. 3 effective as of September 6, 2019 (the "Agreement");

WHEREAS, on June 9, 2016, the Council adopted Motion M-16-224 authorizing the Agreement for property tax appeal hearings management services for tax years 2017 through 2021;

WHEREAS, fiscal year 2020 was a quadrennial reassessment tax year and additional reassessments for 2021 are anticipated to result in a higher-than-average appeal volume, and, accordingly, requires additional financial resources; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term and increase the compensation for the purpose of continuity of services, specifically to administer tax year 2021 property tax appeal hearings management services;

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

1. **Extension.** In accordance with the Agreement, the term is extended for an additional one year from the Effective Date through September 5, 2021.

2. **Compensation.** Article IV Section B of the Agreement is hereby superseded in its entirety and replaced with the following:

B. **Maximum Compensation.** The parties agree and acknowledge that Contractor has been paid a total of \$1,458,522.00 in connection with appeals of 2017, 2018, 2019, and 2020 tax assessments. The maximum amount payable to Contractor in connection with appeals of the 2021 tax assessment, which will be based upon the compensation table set forth in Article IV, Section A(1), shall not exceed \$585,000.00.

3. **Rate of Compensation.** Article IV, Sections A(1)-(3) are hereby superseded in their entirety and replaced with the following:

A. Rate of Compensation:

1. Contractor Compensation Schedule is set forth below:

The contractor Compensation Schedule is set forth at a flat fee structure for appeal volume falling in the first tier (0-499), and a Regressive Tier compensation structure thereafter. Regressive Tier compensation allows charges to be made for individual appeals on a price-per-appeal basis for each appeal occurring beyond the previous tier maximum. The agreed upon compensation structure is as follows:

	Range	Fees Per Appeal (plus base and previous levels)	Max Comp for Tier
1.	0-499	\$137,000 – flat fee	\$137,000
2.	500-749	\$268	\$204,000
3.	750-999	\$248	\$266,000
4.	1000-1249	\$228	\$323,000
5.	1250-1499	\$208	\$375,000
6.	1500-1749	\$188	\$422,000
7.	1750-1999	\$168	\$464,000
8.	2000-2249	\$148	\$501,000
9.	2250-2499	\$128	\$533,000
10.	2500-2749	\$108	\$560,000
11.	2750-3000	\$103	\$585,750
12.	3001-4713	\$95	\$748,588
13.	4714	\$30	\$748,618
14.	4714-5000	\$0	\$748,618

2. In the event that tax year 2021 appeal volume exceeds 2,961, the Agreement will be amended to increase maximum compensation.

3. A detailed rate schedule is attached hereto and made a part hereof as Attachment "A1".

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

Remove and replace the unnumbered paragraphs under Article 3 of Amendment No. 2 titled "Non-Discrimination" with the following:

ARTICLE - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made

possible by or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state, and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

Remove and replace the unnumbered paragraph under Article 3 of Amendment No. 1 titled "Living Wages" with the following:

ARTICLE - LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Amendment, 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 Amendment. 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 Amendment 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 (iii) 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 Amendment, 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.

Add the following terms and conditions to the Agreement:

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.

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.

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 (i.e. K#);
- e. Name of the City Department to be invoiced (i.e. City Civil Service);
- f. Description of the Services completed;
- g. FEMA or HUD project number, if applicable.

2. Invoices will be processed in accordance with 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.

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 Section 2-8(c). 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 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 remain in full force and effect.

8. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Amendment, but all of which, when taken together, shall constitute one and the same agreement.

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 Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
HELENA MORENO, COUNCIL PRESIDENT

JAW
Jason Williams

Executed on this 16 of November, 2020

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorich

HAMMERMAN & GAINER, LLC

BY: 
CHRISTOPHER J. ONEY, MANAGER

74-1780638
FEDERAL TAX I.D.

[ATTACHMENT A1 ATTACHED SEPARATELY]