

K21-1119

AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

HAMMERMAN & GAINER, INC.

PROPERTY TAX ASSESSMENT APPEAL HEARINGS MANAGEMENT SERVICES

THIS FIFTH 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, 2021 (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 Board of Review, 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 and that certain Amendment No. 4 effective as of September 6, 2020 (as amended, the "Agreement"); and

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; and

WHEREAS, on July 1, 2021, the Council adopted Motion M-21-218 authorizing the Agreement for property tax appeal hearings management services for tax years 2017 through 2021; and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the term of the Agreement and increase the compensation for the purpose of continuity, specifically to administer tax year 2022 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 Article V, Section B of the Agreement, the term of the Agreement is extended for an additional one year from the Effective Date through September 5, 2022.

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 **Compensation.** Article IV Section B of the Agreement is hereby superseded in its entirety and replaced with the following: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 the maximum amount payable to Contractor in connection with appeals of the 2022 tax assessment, which will be based upon the compensation table set forth in Article IV, Section A(1), shall not exceed \$224,088.

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 2022 appeal volume exceeds 830, 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:

Compliance with City's Hiring Requirements- Ban the Box.

- i. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

- ii. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
- iii. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.
- iv. 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 those provisions.

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. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and

4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

A. 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.

B. 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

C. 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 (ii) 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.

D. 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.

5. **Convicted Felon Statement.** The Contractor swears that it complies with City Code § 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. **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.

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[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 
HELENA MORENO, COUNCIL PRESIDENT

Executed on this _____ of _____, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

HAMMERMAN & GAINER, LLC

BY: 
CHRISTOPHER J. ONEY, MANAGER

74-1780638
FEDERAL TAX I.D.

