

K19-859

**AMENDMENT NO. ONE TO PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**JEFF ASHER CONSULTING, LLC**

**HEREIN ASSIGNED TO**

**AH DATALYTICS, L.L.C.**

**THIS AMENDMENT** is entered into by and among the City of New Orleans, represented by Helena Moreno, Council President (the “City”), Jeff Asher Consulting, LLC, represented by Jeff Asher, Manager (the “Assignor”), and AH Datalytics, L.L.C., represented by Jeff Asher, Manager (the “Assignee”). The City, the Assignor, and the Assignee are sometimes individually and collectively referred to as a “Party” or the “Parties.” The Amendment is effective as July 19, 2019 (the “Effective Date”).

**RECITALS**

**WHEREAS**, on July 19, 2018, the City and Assignor entered into a professional services agreement bearing contract number K18-784 for public safety analyst consulting services (the “Agreement”);

**WHEREAS**, Assignor has provided notice pursuant to Article X Section B of the Agreement of its desire to assign its rights, duties and obligations under the Agreement to Assignee;

**WHEREAS**, Assignee is a new legal entity organized by Jeff Asher on April 10, 2019 and desires to assume the rights and obligations of the Assignor set forth in the Agreement;

**WHEREAS**, on July 25, 2019, the Council adopted Motion M-19-244 to approve the assignment to Assignee and extend the term of the Agreement;

**WHEREAS**, the City, the Assignor, and the Assignee, each having the authority to do so, desire to enter this Amendment as set forth below.

**NOW THEREFORE**, for good and valuable consideration, the Parties amend the Agreement as follows:

1. **Assignment and Assumption.** Effective as of the Effective Date, Assignor hereby assigns to Assignee any and all liabilities, rights and obligations arising under the Agreement, as it may be amended from time to time. Assignee assumes all liabilities, rights and obligations assigned hereunder.

2. **Consent to Assignment and Assumption.** The City acknowledges, accepts and consents to the foregoing assignment and assumption.

3. **Extension.** In accordance with Article IV Section B of the Agreement, the term is extended for an additional one year from the Effective Date through July 18, 2020.

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 **Compensation.** Article II Section B of the Agreement is hereby superseded in its entirety and replaced with the following:

B. **Maximum Compensation.** The compensation to be paid to the Contractor for any services performed during the initial term of this Agreement shall not exceed \$150,000.000. The compensation to be paid to the Contractor for any services performed during the renewal term beginning on July 19, 2019 and ending on July 18, 2020 shall not exceed \$150,000.000.

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

#### **PERFORMANCE MEASURES**

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

6. **Convicted Felon Statement.** The Assignee swears that it complies with City Code § 2-8(c). No principal, member, or officer of Assignee 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 Assignor and Assignee swear that they have 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 Assignor and Assignee have 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.

10. **No Legal Representation.** Each party acknowledges that, in executing this Amendment, such party has had the opportunity to seek the advice of independent legal counsel

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.

D. 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.

### **NON-DISCRIMINATION**

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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 those provisions.

D. 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.

6. **Convicted Felon Statement.** The Assignee swears that it complies with City Code § 2-8(c). No principal, member, or officer of Assignee 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.

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10. **No Legal Representation.** Each party acknowledges that, in executing this Amendment, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this instrument. This Amendment shall not be construed against any party by reason of the drafting or preparation hereof.

[SIGNATURES CONTAINED ON NEXT PAGE]

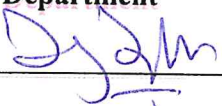
IN WITNESS WHEREOF, the City, Assignor, and Assignee, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS


BY:   
HELENA MORENO, COUNCIL PRESIDENT

Executed on this 15<sup>th</sup> of October, 2019

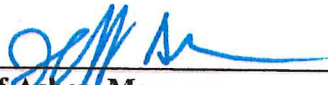
FORM AND LEGALITY APPROVED:  
Law Department

By:   
Printed Name: Tracy Tyler

JEFF ASHER CONSULTING, LLC

BY:   
Jeff Asher, President  
90-1246042  
FEDERAL TAX I.D.

AH DATALYTICS, L.L.C.

BY:   
Jeff Asher, Manager  
83-4358287  
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