

AMENDMENT NO. 4 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

THE DAVENPORT GROUP USA, LTD.

THIS FOURTH AMENDMENT ("Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and The Davenport Group USA, LTD., represented by Ben Davenport, Agent ("**Davenport**" or the "**Contractor**"). The City and the Contractor are sometimes collectively referred to as the "**Parties**." The Amendment is effective as of **March 15, 2022** (the "**Effective Date**").

RECITALS

WHEREAS, on and effective March 15, 2018, the City and the Contractor entered into a Professional Services Agreement (the "**Agreement**") to maintain and support the existing technology solution used to support the issuance and enforcement of all permits, planning projects, work orders, code enforcement, and licenses known as City Land Management ("**LAMA**");

WHEREAS, the Contractor is the sole source provider and therefore is the only party who can provide support and maintenance services;

WHEREAS, the Agreement provided for an initial term of one (1) year from the Effective Date with the ability to extend the term for no more than four (4) one (1) year periods;

WHEREAS, on January 14, 2019, effective March 15, 2019, the City and the Contractor amended the Agreement for the first time to extend the term for an additional one (1) year and to increase the compensation ("**Amendment No. 1**");

WHEREAS, on March 13, 2020, effective March 15, 2020, the City and the Contractor amended the Agreement for the first time to extend the term for an additional one (1) year and to increase the compensation ("**Amendment No. 2**");

WHEREAS, on December 28, 2020, effective March 15, 2021, the City and the Contractor amended the Agreement for the first time to extend the term for an additional one (1) year and to increase the compensation ("**Amendment No. 3**"); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this Amendment to extend the Agreement, to increase the compensation, and to reaffirm and/or modify certain terms and conditions.

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 is extended for an additional 1 year from the Effective Date through **March 14, 2023**.

2. **Compensation.** The compensation described in Article IV Section B of the Agreement is increased by **\$110,849.00** to a total amount not to exceed **\$556,245.67**.

3. **Living Wages.** Article VIII is deleted in its entirety and replaced, as follows:

ARTICLE VIII – LIVING WAGES

A. **Definitions.** Unless otherwise expressly provided in this Agreement, 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.

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 Agreement 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.

H. **Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, 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.

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

Article I Section E

Invoices. Article I Section E is deleted in its entirety and replaced, as follows:

E. Invoices.

1. The Contractor must submit monthly invoices (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal (i.e., BRASS), for goods

and/or services provided under this Agreement, **no later than seven (7) calendar days following the date that the Contractor has printed on their invoice (the "Invoice Date") and no later than ten (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. Invoice Date/ date of invoice;
 - c. The beginning and end dates of the period covered by the invoice.
 - d. Invoice number;
 - e. Related contract "K" number or purchase order number issued by the City;
 - f. The name of the City Department to be invoiced (i.e., Office of Safety and Permits); and
 - g. Description of services performed each month, broken down into applicable categories.
2. The City may require changes to the form or the content of the invoice.
 3. The City may also require additional supporting documentation to be submitted with invoices.
 4. 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.

Article III Section B

Payment. Article III Section B entitled "Payment" is amended by adding Subsection 7 at the end thereof, as follows:

7. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing 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.

Article III Section A.1

The City's Obligations. Article III Section A.1 is deleted in its entirety and replaced, as follows:

1. Administer this Agreement through the Office of Safety and Permits (the "Department") and the Office of Information Technology and Innovation, as needed, in the City's discretion.

Article XII Section A.1

Notice. Article XII Section A.1 deleted in its entirety and replaced, as follows:

Tammie Jackson, Interim Director
Office of Safety and Permits
City of New Orleans
1300 Perdido St, 7th floor
New Orleans, 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

Any notice required to be given by the Contractor to the City pursuant to this Agreement shall also be given in the same manner to:

Chief Information Officer
City of New Orleans
1300 Perdido Street, Suite 3E05
New Orleans, LA 70112

Article X -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.

5. *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."

6. *Audit and Other Oversight.* It is agreed that the Contractor will 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 contract. In signing this contract, the Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

7. *Employee Verification.* The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. The Contractor acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

8. **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.

9. **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.

10. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

11. **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: 
LATOYA CANTRELL, MAYOR

Executed on this 12th of April, 2022.

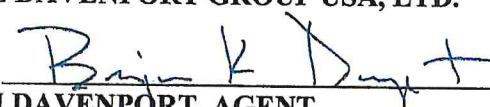
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyle

THE DAVENPORT GROUP USA, LTD.

BY: 
BEN DAVENPORT, AGENT


TAX I.D.

[END OF AMENDMENT]