

K22-378

AMENDMENT NO. FIVE TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

BY AND THROUGH

THE NEW ORLEANS AVIATION BOARD

AND

CHRISTOVICH & KEARNEY, LLP

THIS AMENDMENT is entered into by and between the City of New Orleans, represented by Latoya Cantrell, Mayor (the "City") by and through the New Orleans Aviation Board, represented by the Hon. Michael G. Bagneris, Chairman (the "Board") (collectively referred to as "Airport"), and Christovich & Kearney, LLP, represented by Kevin R. Tully (the "Consultant" or "Christovich"). The Airport and the Consultant are sometimes collectively referred to as the "Parties." The Amendment is effective December 14, 2021 (the "Effective Date").

RECITALS

WHEREAS, on December 14, 2016, the Airport and the Consultant entered into a Professional Services Agreement for Airport Outside Counsel Legal Services (the "Agreement");

WHEREAS, the first amendment dated December 14, 2017, provided for the exercise of the first of four one-year renewal periods and added additional funding;

WHEREAS, the second amendment dated December 14, 2018, provided for the exercise of the second of four one-year renewal periods and added additional funding;

WHEREAS, the third amendment, dated December 14, 2019, provided for the incorporation of the Cost Recovery and revised Living Wages provisions, the exercise of the third of four one-year renewal periods and added additional funding;

WHEREAS, the fourth amendment, dated December 14, 2020, provided for the fourth of four one-year renewals and added additional funding;

WHEREAS, the Airport is in the process of issuing a new professional services solicitation to hire on-call counsel;

WHEREAS, the Airport and the Consultant, each having the authority to do so, desire to enter this Amendment to exercise the fifth renewal one-year renewal with limited scope: 1) to receive assignments until the new procurement is complete, and 2) once new counsel is procured, Christovich cannot accept new assignments but can complete already assigned work; and

WHEREAS, the Board approved this Amendment at its meeting held on October 21, 2021.

NOW THEREFORE, for good and valuable consideration, the Airport and the Consultant amend the Agreement as follows:

1. **Extension.** The term is extended for one year from the Effective Date of December 14, 2021, with limited scope: 1) to receive assignments until the new procurement is complete, and 2) once new counsel is procured, Christovich cannot accept new assignments under this Agreement but can complete any assigned work..
2. **Compensation.** The maximum aggregate remuneration budgeted and authorized by the Board for the one-year term under this Amendment for all outside counsel service providers under contract with the Airport is a sum not to exceed \$300,000.00. Counsel shall only be paid for specific services authorized and provided under an executed EL as described in Article 3 of the Agreement.
 - a. **Cost Recovery.** In accordance with Section 2-8.1 of the New Orleans Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Consultant shall reimburse the NOAB or disgorge anything of value or economic benefit received from the NOAB if the Consultant fails to meet its contractual obligations.

3. **Convicted Felon Statement.** The Consultant swears that it complies with City Code § 2-8(c). No Consultant 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.
4. **Non-Solicitation Statement.** The Consultant swears that it has not employed or retained any company or person to solicit or secure this Amendment other than a 1) bona fide employee working solely for Consultant; 2) consultant representing the Consultant; or 3) an attorney representing the Consultant. The Consultant has not paid or agreed to pay any person any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Amendment other than a 1) bona fide employee working solely for Consultant; 2) consultant representing the Consultant; or 3) an attorney representing the Consultant.
5. **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 Consultant agrees to abide by City Code Sections 70-801, et seq., which requires, in pertinent part, the following:
 - i. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("Living Wage");
 - ii. 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
 - iii. 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 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.
 - 5.
 - d. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Consultant acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. 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 Consultant, 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 Consultants 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 Consultant 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

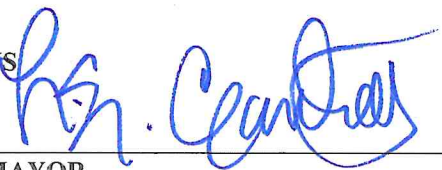
- g. **Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the 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 Consultant 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 Consultant 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 Consultant, payroll records and employee paychecks; and (ii) that the City may audit such records of the Consultant as he or she reasonably deems necessary to determine compliance with the Living Wage standards.
- h. **Remedies.** If the Consultant 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.
6. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.
7. **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.
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 Airport and the Consultant, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this

3rd

of

May

, 2022

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyle

[BOARD SIGNATURES CONTAINED ON NEXT PAGE]

Approved by resolution of the New Orleans Aviation Board dated October 21, 2021 and directing the Chairman and Director of Aviation to execute the same:

NEW ORLEANS AVIATION BOARD

By: Michael G. Bagneris 4/12/22
Hon. Michael G. Bagneris, Chairman Date
New Orleans Aviation Board

By: Kevin Dolliole 4-11-22
Kevin Dolliole, Director of Aviation Date
New Orleans Aviation Board

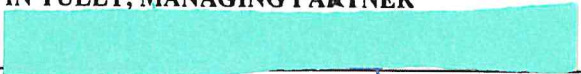
Reviewed as to form and legality:

By: Michele Allen-Hart 4/8/2022
Michele Allen-Hart Date
General Counsel and Deputy Director of Legal Affairs
New Orleans Aviation Board

[CONSULTANT SIGNATURE CONTAINED ON NEXT PAGE]

CHRISTOVICH & KEARNEY

BY: Kevin Tully
KEVIN TULLY, MANAGING PARTNER


FEDERAL TAX I.D.

