

K20-080

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

HAMMERMAN & GAINER, LLC

RFP NO. 7017-02306

THIRD-PARTY AUTOMOBILE CLAIMS ADMINISTRATION

THIS FIRST AMENDMENT (the “Amendment”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”), and Hammerman & Gainer, LLC, represented by Christopher Oney, President (“HGI” or the “Contractor”). The City and the Contractor may each individually be referred to as a “Party” or collectively as the “Parties.” The Agreement is effective as of January 1, 2020 (the “Effective Date”).

RECITALS

WHEREAS, on November 17, 2017, the City issued a request for proposals 7017-02306 (the “RFP”) seeking qualified persons to provide third-party automobile liability services, including bodily injury and property damage claims services, relating to the City’s Self-Insured Program (the “Services”);

WHEREAS, the Contractor submitted a proposal dated November 21, 2017 and the City has selected the Contractor to perform the professional services described in the RFP;

WHEREAS, on January 1, 2019 and effective January 23, 2019, the City and the Contractor entered into a professional services agreement (the “Agreement”) for the 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; 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 for one (1) year.

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 one (1) from the Effective Date through December 31, 2020.
2. **Maximum Amount.** The compensation described in Article IV Section B of the Agreement is increased by \$205,000.00 to a total amount not to exceed \$410,000.00.
3. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or 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.

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.

4. 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.

5. **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.

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

7. **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.

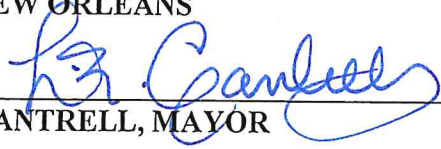
8. **Compliance with the City's Hiring Requirements – Ban the Box.** (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with 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.

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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 10TH of FEBRUARY, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

HAMMERMAN & GAINER, LLC

BY: 
CHRISTOPHER ONEY, PRESIDENT

ENT]



City of New Orleans
Law Department

MEMORANDUM

Date: January 15, 2020
To: Sunni J. LeBeouf, City Attorney
From: Austin P. Wilty, Assistant City Attorney

K20-080

Pursuant to City Charter Sections 4-401(5) and 6-308(1), City Attorney's approval and the Mayor's execution are required for the following transaction:

Originating Department: Risk Management - Chief Administrative Office ("CAO").

Type of Agreement: Amendment No. 1 (the "Amendment") to Professional Services Agreement.

Parties: The City of New Orleans (the "City"); Hammerman & Gainer, LLC (the "Contractor").

Procurement: Request for Proposals No. 7017-02306 (the "RFP").

Amendment: First.

Scope of services: To provide third-party automobile liability services, including bodily injury and property damage claims services, relating to the City's Self-Insured Program.

Purpose: To extend the term of the Agreement for an additional one (1) year from the Effective Date through December 31, 2020 and to increase the maximum aggregate amount of compensation payable to the Contractor.

Term: 1 year, effective January 1, 2020 through December 31, 2020.

Amount: Increased by \$205,000.00 to a total amount not to exceed \$410,000.00.

Supporting Documents: 1) DBE Validation; 2) Tax Clearance; 3) Good Standing; 4) Proof of Signatory Authority; 5) Certificate of Insurance; 6) Original Agreement; and 7) Affidavit of Compliance with Hiring Requirements.

Contract No.: ~~K19-1178~~ K20-050

BRASS Identification No.: N/A.

I have reviewed the First Amendment to the Professional Services Agreement and supporting documents. It is correct as to form and legality. Please know that I am available if you have any questions or need additional information. APW.