

K15-1213

AGREEMENT
FOR PROFESSIONAL SERVICES BETWEEN
THE COUNCIL OF THE CITY OF NEW ORLEANS
AND
HENRY CONSULTING, L.L.C.

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is made and entered into as of the 1st day January 2016 (the “**Effective Date**”) by and between the Council of the City of New Orleans, represented by Jason R. Williams, Council President (the “**Council**”), and Henry Consulting, L.L.C., represented by Troy Henry, Managing Partner (the “**Contractor**”).

WHEREAS, the Council desires to engage qualified and professional consultants to provide cable, telecommunications, and technology technical consulting services;

WHEREAS, on April 9, 2015, pursuant to Rule 45, the Council adopted Motion M-15-137, which directed the Council staff to issue a request for qualifications to initiate a competitive selection process to hire consultants with the expertise in cable, telecommunications, and technology technical issues;

WHEREAS, on May 18, 2015, the Council issued a Request for Qualifications relative to cable, telecommunications, and technology services (the “**RFQ**”);

WHEREAS, the Contractor submitted a response to the RFQ on June 24, 2015;

WHEREAS, after review by the selection committee of the Council Staff, the Utility, Cable, Telecommunications and Technology Committee of the Council (“**UCTTC**”) met on August 27, 2015, and recommended to the Council the selection of the Contractor; and

WHEREAS, by adopted Motion M-15-413 on September 3, 2015, the Council approved the recommendation for an initial maximum annual amount of \$135,000.00, renewable on an annual basis for a total period of up to five years, with a scope of work consistent with the RFQ and the Council’s cable, telecommunications, and technology technical consulting needs.

NOW, THEREFORE, the Council and the Contractor, for the consideration and under the conditions set forth herein, agree as follows:

ARTICLE I - SCOPE OF SERVICES

A. Contractor’s Obligations. Upon request by Council Utility Regulatory Office personnel and working in conjunction with the Council’s legal consultant for cable, telecommunications, and technology issues, the Contractor shall provide technical and/or policy advice and assistance to the Council on cable, telecommunications, and technology matters including, but not limited to:

1. Preparation and/or review and advice regarding ordinances, resolutions, motions, and other legal instruments necessary to effectuate the Council's policy goals;
2. Preparation and/or review and advice regarding wireline or wireless telecommunications franchises, leases, and permits;

3. Preparation and/or review and advice regarding cable franchises or any Council agreements with cable providers, and related issues pertaining to Public, Educational and Government (“PEG”) cable access television, including, for example, the promotion of new initiatives in government access programming;
4. Monitoring and advising the Council on developments in state and federal law, including developments that may have an impact on the telecommunications infrastructure of New Orleans, as such developments may occur at state or federal legislative bodies, and in proceedings at the Federal Communications Commission (“FCC”), the Louisiana Public Service Commission (“LPSC”), courts of law, or state and federal administrative agencies;
5. Any and all matters as relate to the Council’s computer systems and other technologies; for example, the design and implementation of Granicus or other systems, or other technological advancements to enhance the efficient and transparent administration of work processes, meetings, and management of documents for the Council, Council Committees and staff;
6. The distribution of certain grant funds to non-profit organization applicants; and
7. Any other services necessary and relevant to assisting the Council in formulating and implementing its cable, telecommunications, and technology policy goals.

B. Council’s Obligations. The Council shall:

1. Provide contract administration through the Council Utilities Regulatory Office; and
2. Provide access to records, documents and other information as may be required. Requests for support and information may be directed to the Council Utilities Regulatory Office.

ARTICLE II - COMPENSATION

A. Invoice. The Contractor will invoice the Council on a monthly basis during the term of the Agreement. In its invoice, the Contractor shall provide detailed descriptions of work and time entries shall be in increments of one-tenth of an hour.

B. Rate. The rates of compensation to be paid for services rendered will be at the following hourly billing rates, for personnel Contractor commits to make available during the contract period:

Project Executive	\$225.00
Managing Director	\$175.00
Senior Consultant	\$140.00
Project Manager	\$125.00
Consultant	\$110.00

C. Maximum Compensation. The compensation to be paid to the Contractor under this Agreement shall not exceed One Hundred Thirty-Five Thousand Dollars and Zero Cents (\$135,000.00). This maximum compensation is inclusive of any necessary and ordinary expenses incurred by the Contractor.

D. Compensation Subject to Appropriation. This Agreement is contingent upon the appropriation and allocation of funds by the Council.

E. Labor Fee Reimbursement. The Council shall only provide labor fee reimbursement for one (1) Contractor consultant for the attendance at all requested and necessary meetings of the Council, the UCTTC, briefings of councilmembers, and representation before any court or regulatory body and during the conduct of regulatory proceedings before the Council and other regulatory bodies, unless advance authorization is given by Council Utilities Regulatory Office personnel, for attendance by additional Contractor consultants.

F. Key Personnel. The RFQ identified Key Personnel as partners, principals and employees in the firm who will be responsible for, and actively involved in, the provision of professional services for the Council. The following persons are identified as Key Personnel: Troy A. Henry, Michael McKenna, Troy A. Carter, David M. Cody, Brandon Henry, Nicole T. Henry, and Mike A. Small. Key personnel may not be replaced without consent of the Council Utility Regulatory Office.

ARTICLE III - EXPENSES

Unless otherwise approved by the contracting officer of the Council, reimbursable expenses shall be limited as follows: meals at reasonable and customary costs for the Council in which they are consumed absent charges for alcoholic beverages, air transportation limited to lowest available coach fares the time of booking, lodging expenses in New Orleans not to exceed federal per diem rate for hotels in New Orleans to the extent achievable without an official governmental identification for the personnel; postage, overnight delivery or courier services at contractor's actual cost; facsimile transmissions and long distance telephone charges at contractor's actual cost; copies at \$0.10 per page; computerized research at contractor's actual cost.

ARTICLE IV – TERM

A. Initial Term. The term of this agreement shall be for one (1) year from the Effective Date through December 31, 2016.

B. Extension. This Agreement may be extended at the option of the Council, provided that funds are allocated by the Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the Council for five (5) additional one-year terms.

ARTICLE V - TERMINATION

A. Termination for Convenience. Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least thirty (30) calendar days before the intended date of termination.

B. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the Council will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

C. Termination for Cause. The Council may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a

termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required

ARTICLE VI – INDEMNIFICATION

The Contractor shall indemnify, defend, and save harmless the Council, its agents, employees, officials, insurers, self-insurance funds, and assigns against any and all claims, demands, suits, judgments of sum of money to any party accruing against the Council for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act of omission of the operation of the Contractor, his agents, servants or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Contractor hereunder; and from any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of its obligation under this Agreement unless such labor, services, or materials have been specifically authorized, in writing and in advance, through an appropriate purchase order or purchasing memo signed by an authorized representative of the Council.

ARTICLE VII – MISCELLANEOUS PROVISIONS

A. Acknowledgment of Exclusion of Unemployment Compensation Coverage. The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the Council under this Agreement for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Agreement, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the Council over the performance of the services covered by this agreement; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the Council's usual business; and
- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the Council for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

B. Acknowledgment of Exclusion of Workers' Compensation Coverage. The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the Council shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the Council for the purpose of Worker's Compensation coverage.

C. Amendment. The Agreement shall not be modified except by written amendment executed by duly authorized representatives of the parties.

D. Assignability. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the Council.

E. Audit and Inspection. 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 Agreement. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

F. Choice of Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

G. Conflict of Interest. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the Council, and in recognition of the Contractor's responsibility to the Council, the Contractor agrees to decline any offer of employment if its independent work on behalf of the Council is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the Council and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the Council. Final decision on any disputed offers of other employment for the Contractor shall rest with the Council.

H. Construction of Agreement. Neither party will be deemed to have drafted the Agreement. The Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Agreement will be construed or resolved in favor of or against the Council or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of the Agreement. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

I. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five (5) 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.

J. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

K. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this agreement, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken

to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, 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, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

L. Exclusive Jurisdiction and Venue. For all claims arising out of or related to this Agreement, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

M. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the Council and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the Council.

N. Limitation of the Council's Obligations. The Council has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

O. No Third Party Beneficiaries. The Agreement is entered into for the exclusive benefit of the Council and the Contractor, and the Council and the Contractor expressly disclaim any intent to benefit anyone not a party to this Agreement.

P. 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 Council 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.

Q. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the Council's approval of any potential conflicts with the performance of this Agreement and the Council may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

R. Non-Solicitation. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him,

any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement.

S. Non-Waiver. The failure of the Council to insist upon strict compliance with any provision of the Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the Council's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

T. Ownership Interest Disclosure. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the Council may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

U. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of Council and the Council will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the Council's name. No Work Product may be reproduced in any form without the Council's express written consent. The Council may use and distribute any Work Product for any purpose the Council deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

V. Prohibition Against Financial Interest in Agreement. No elected official or employee of the Council shall have a financial interest, direct or indirect, in the Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Agreement voidable by the Council and shall entitle the Council to recover, in addition to any other rights and remedies available to the Council, all monies paid by the Council to the Contractor pursuant to this Agreement without regard to the Contractor's satisfactory performance.

W. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

X. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

Y. Severability. If a court of competent jurisdiction finds any provision of the Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Agreement will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Agreement.

Z. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the Council. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the Council, the Contractor must provide notice to the Council within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the Council may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

AA. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Agreement and continue in full force and effect.

BB. Terms Binding. The terms and conditions of the Agreement are binding on any heirs, successors, transferees, and assigns.

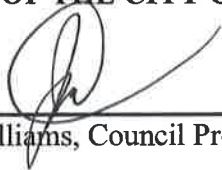
CC. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the Council any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the Council under this Agreement.

[REMAINDER LEFT INTENTIONALLY BLANK]

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the Council and the Contractor, through their duly authorized representatives, execute this Agreement.


COUNCIL OF THE CITY OF NEW ORLEANS



Jason R. Williams, Council President

HENRY CONSULTING, L.L.C.





By: Troy Henry, Managing Partner
1010 Common Street
Suite 2500
New Orleans, LA 70112
Taxpayer ID Number 95-4894255

APPROVED:

Law Department

By: _____

Printed Name: 
