

K16-609

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE CITY OF NEW ORLEANS

AND

SPEARS CONSULTING GROUP, L.L.C.

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 1ST day of March 2016 (the "Effective Date"), by and between the City of New Orleans, through the Council of the City of New Orleans (the "Council"), represented by Stacey Head, Council President ("the City"), and Spears Consulting Group, L.L.C., represented by Cleveland Spears, President and CEO ("Contractor").

RECITALS

WHEREAS, the Council recognizes the need for effective communications between the Council and the public and between the Council and the news media;

WHEREAS, on June 18, 2015, the Council adopted Motion M-15-253, directing Council staff to issue a Request for Proposals relative to the competitive selection process established by Council Rule 45 for communications services for the Council (the "RFP");

WHEREAS, on June 23, 2015, the Council issued the RFP;

WHEREAS, on July 30, 2015, the Contractor submitted a response to the RFP;

WHEREAS, the Contractor possesses the required skills and experience and is willing to provide the services requested by the Council; and

WHEREAS, the Council wishes to take advantage of the skills and experience possessed by the Contractor and to that end has adopted Motion M-15-607 authorizing the Council President to

sign a professional services contract to retain the Contractor as communications consultant to the Council;

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

I. SCOPE OF SERVICES

A. CONTRACTOR AGREES TO:

1. Develop strategy for consistent, informative communication from the Council to the public regarding issues coming before the Council and its committees, and the Council's actions regarding such issues. This will include the initiation of ideas on when and how to best inform the public regarding such issues and working with the Council to implement recommendations as appropriate.
2. Attend Pre-Council agenda briefings or meetings with Council staff when directed and/or required.
3. Arrange for and coordinate media coverage of issues before the Council as a whole and its committees, including organizing press conferences and interviews and arranging appearances on appropriate media outlets. The Contractor should be available to provide talking points, speeches, and briefings as needed.
4. Assist in the development of educational materials, news stories, and briefing documents on long-term concerns, as well as current issues, to improve the quality and consistency of information provided to the public, including the writing of technical information in easily readable and understandable forms and issuing press releases prior to and following Council/Committee meetings.

5. Coordinate with the Council the use of the Government Services Access Cable T.V. Channel and Streaming Council Website Video with the government services access provider and technology vendors. This may include assisting individual Councilmembers with developing content and image management for NOATV-produced shows, as needed and as resources allow, so long as the assistance is distributed among the individual Councilmembers in a more or less equal manner.
6. Make recommendations to the Council on more effective and informative presentation of Council meetings on cable television, the Council's website, and other web-based media.
7. Advise Councilmembers and Council staff on public notices and similar communications intended for the press and general public.
8. Continue development and use of communication technologies (e.g. Internet, other interactive media, etc.) for and on behalf of the Council.
9. Develop and maintain the Council's social network accounts with current news, photos, updates, and items of public interest. Build social media audience and influence.
10. Ensure consistency in full-Council and individual-Councilmember communications, including but not limited to collateral materials and digital design elements such as email signatures, Power Point templates, brochures, newsletters, logos, and letterhead.
11. Pursuant to Council Rule 46, on or before February 15th of each year prepare and distribute to the public an Annual Report that is a summary of Council

accomplishments, including legislative action and projects completed during the preceding year by the Council as a whole and by individual Council offices.

13. Maintain and recommend improvements to the Council's website and ensure that items of public interest are consistently posted in a timely manner. Implement improvements to the website approved by the Council Chief of Staff.
14. Attend Council meetings and provide a camera or other photographic equipment at each meeting staffed by the Contractor in order to photographically document significant events and/or visiting dignitaries. Attend Council Committee meetings and other Community meetings as called for.
15. Seek the approval of the Council Chief of Staff prior to subcontracting with any individual or entity to perform any services described herein.
16. Assist the Council with website support, including but not limited to:
 - a. Advise and assist Councilmembers and staff with updates to the Council's web pages;
 - b. Recommend and coordinate updates to the Council's homepage and relevant news features as necessary and facilitate postings and updates with the Council's hosting and/or design firm; and
 - c. Advise, recommend, and, if necessary, coordinate the transition of the Council's website from its current host and platform to another host and platform. During any such transition, the Contractor will be responsible for both maintaining the current website and coordinating the transition.

- d. Preserve the Council's historical website archival record and maintain its availability to the Council and public for reference.
- 17. Work with the Council Chief of Staff on the transition of the communications consultant responsibilities to a new contractor when that occurs.
- 18. Any other services necessary and relevant to assist the Council in formulating and implementing its goal to ensure effective communications between the Council and the public and between the Council and the news media.

B. THE CITY AGREES TO:

- 1. Use its best efforts to provide the Contractor with access to information, records, and documents necessary to the Contractor's successful performance of its duties under the Agreement.
- 2. Administer the Agreement through the Council Chief of Staff's office.

II. COMPENSATION:

- A. **Invoice.** The Contractor will invoice the Council on a monthly basis during the term of the Agreement. In its invoices, the Contractor shall provide detailed descriptions of work, date of work, and person performing work. 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 the Contractor commits to make available during the term of the Agreement:

Principal: \$150.00

Director of Public Relations: \$110.00

Creative Director / Graphic Artist: \$110.00

Public Relations Manager: \$100.00

Account Executive: \$90.00

- C. **Maximum Compensation:** The compensation to be paid to the Contractor under this Agreement shall not exceed \$125,000.00. 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 1 Contractor consultant for attendance at all requested and necessary meetings of the Council, Council Committee meetings, and briefings of Councilmembers and/or Council staff, unless advanced authorization is given by the Council Chief of Staff's office for attendance by additional Contractor consultants.

III. **TERM**

- A. **Initial Term.** The term of this Agreement shall be for one (1) year from the Effective Date through February 28, 2017.
- B. **Extension.** This Agreement may be extended at the option of the City, 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 City for five (5) additional one-year terms.

IV. 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 City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

C. Termination for Cause. The City 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.

V. INDEMNIFICATION

The Contractor shall indemnify, defend, and save harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns against any and all claims, demands, suits, judgments of sums of money to any party accruing against the City 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.

VI. 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 City 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 City 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 City'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 City 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 City 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 City 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 City.

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 City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City 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 City and provide full disclosure of the possible effects of such employment on the Contractor's independent work on behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

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 City 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 City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

N. Limitation of the City's Obligations. The City 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 City and the Contractor, and the City 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 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.

Q. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this

Agreement, and the City 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 City 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 City'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 City 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, web content, 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 City, and the City 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 City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor. Contractor will be allowed to display non-confidential portions of work product on company website, company portfolio or in future proposals for promotional purposes only. Contractor shall give advance notice to the City for said use.

V. **Prohibition Against Financial Interest in Agreement.** No elected official or employee of the City 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 City and shall entitle the City to recover, in addition to any other rights and remedies available to the

City, all monies paid by the City 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 were 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 City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City 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 City 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 City under this Agreement.

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[SIGNATURES CONTAINED ON NEXT PAGE]


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

CITY OF NEW ORLEANS



Stacy Head, Council President

SPEARS CONSULTING GROUP, LLC



By: Cleveland Spears
132 Carondelet, Suite A
New Orleans, Louisiana 70130
Telephone: (504) 304-8198
Taxpayer I.D. Number 26-2982546

APPROVED:
Law Department

By: _____

Printed Name: Julie Meyer