

RESOLUTION NO. 70 - 2017

Moved by: Wanda Williams

A Resolution authorizing the City of Harrisburg to negotiate and enter into a professional services contract with Sigma Resources for transitional management-related services within the Bureau of Information Technology.

WHEREAS, the City desires to continue with information technology consulting services to assist the transition toward an updated information technology infrastructure to serve the operational needs of the City; and

WHEREAS, the modernization of the IT infrastructure requires ongoing professional technical assistance and coordination, along with planning and oversight of the City's computer-relating purchasing needs and operations; and

WHEREAS, SIGMA RESOURCES has provided temporary assistance since the cascading June 2016 technology interruptions experienced in City operations and the City desires to continue to employ the services of the firm to assure that implementation and transition of upgraded hardware and software can occur; and

WHEREAS, SIGMA RESOURCES has been called upon to assist in an array of technology--related matters, including upgrades of various City operations, with those services being necessary to City operations and beyond the original services contemplated; and

WHEREAS, the City of Harrisburg has determined that it is in the best interest of the City to secure the opportunity to call upon SIGMA RESOURCES through the remainder of 2017 to complete upgrades, software purchases and related consulting services; and

WHEREAS, the City intends, and the Technology Consultant agrees, that the Technology Consultant shall perform the Services in accordance with the terms and conditions of this Agreement.

WHEREAS, the City intends to enter into an agreement for transitional management-related services within the Bureau of Information Technology with Sigma Resources; and

WHEREAS, a copy of the professional services contract with Sigma Resources is attached as "Exhibit A."

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the City of Harrisburg is authorized to negotiate and enter into a professional services contract with Sigma Resources for transitional management-related services within the Bureau of Information Technology.

BE IT FURTHER RESOLVED that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

Seconded by: Ben J. Allan

YEAS		NAYS
	MR. ALLATT	
	MR. BALTIMORE	Excused
	MS. DANIELS	
	MS. HODGES	
	MR. JOHNSON	
	MR. MAJORS	
	MS. WILLIAMS	
Yeas	6	
Nays	0	

Passed by City Council July 6, 2017

Wanda R. D. Williams

President of City Council

Attest

[Signature]
City Clerk

- Approved
- Returned to City Council with objections

E x h i b i t “A”

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") made this ____ day of _____, 2017, by and between the CITY OF HARRISBURG, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal address of Martin Luther King Jr. City Government Center, 10 North Second Street, Harrisburg, PA 17101 (the "City") and SIGMA-RESOURCES, LLC, d/b/a SIGMA RESOURCES, a Pennsylvania Limited Liability Company, with a principal address of 7950 Saltsburg Road Pittsburgh, PA 15239 (the "Technology Consultant").

WITNESSETH

WHEREAS, the City desires to continue with information technology consulting services to assist the transition toward an updated information technology infrastructure to serve the operational needs of the City; and

WHEREAS, the modernization of the IT infrastructure requires ongoing professional technical assistance and coordination, along with planning and oversight of the City's computer-relating purchasing needs and operations; and

WHEREAS, SIGMA RESOURCES has provided temporary assistance since the cascading June 2016 technology interruptions experienced in City operations and the City desires to continue to employ the services of the firm to assure that implementation and transition of upgraded hardware and software can occur; and

WHEREAS, SIGMA RESOURCES has been called upon to assist in an array of technology--related matters, including upgrades of various City operations, with those services being necessary to City operations and beyond the original services contemplated; and

WHEREAS, the City of Harrisburg has determined that it is in the best interest of the City to secure the opportunity to call upon SIGMA RESOURCES through the remainder of 2017 to complete upgrades, software purchases and related consulting services; and

WHEREAS, the City intends, and the Technology Consultant agrees, that the Technology Consultant shall perform the Services in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and intending to be legally bound, the parties agree as follows:

1. Recitals.

The above recitals are incorporated herein by reference thereto, made a part of this Agreement and are deemed to be an integral part of this Agreement.

2. Term.

In consideration of the ongoing services provided, the term of this Agreement shall be deemed to commence at the conclusion of the last 90-day authorization issued by Executive Order, which the parties agree to be May 22, 2017, and shall continue for until the earlier of December 31, 2017 or the issuance of a Notice of Termination, unless extended as set forth more fully in this Agreement. In the event the City changes, modifies, and/or amends the scope of the

Project, the Term may be adjusted to allow a reasonable amount of time for the Technology Consultant to complete or transition to City personnel any ongoing operational services, in a manner and timeframe that mutually agreeable to the parties. Specific assignments, tasks, or services in addition to or varying with the Scope of Services herein will not be undertaken by the Technology Consultant unless directly authorized in writing by the Mayor and acknowledged by the Technology Consultant.

3. Scope of Services.

3.1 The scope of Technology Consultant's Services is as follows:

1. Continue review, management, documentation and implementation of software to serve City operational needs, including assuring compliance with City's purchasing policies and practice requirements.
2. Interim supervision of IT personnel after the pending retirement of the current until a new Director of IT is employed by the City and assists new Director in transition to those responsibilities. The assignment will require oversight of IT staff for compliance with City policies and applicable federal, state and local laws. The Technology Consultant will make prompt and detailed recommendation to the Mayor, the Director of Communications and the Director of Human Resources of any proposed corrective action(s) deemed necessary for compliance issues. The Technology Consultant shall designate a single person to handle such tasks who shall be directly approved by the Mayor.
3. Assure the completion of the licensing and implementation of Office 365 for City personnel.
4. Coordinate its Services with the City and other City's consultants, if any.
5. Manage the implementation of the SAN Server(s) replacements, upgrades and related work.

4. Compensation.

4.1 The City shall pay compensation to Technology Consultant as follow:

- 4.1.1 The Technology Consultant shall be paid on a billing method for services performed at the rate of \$87.00 per hour.
- 4.1.2 The Technology Consultant shall receive a guaranteed fee for the month of June 2017 in the amount of \$25,000.
- 4.1.3 It is anticipated that the Technology Consultant will provide billable services up to 80 hours per week.
- 4.1.4 The total sums payable to the Technology Consultant under this Agreement shall not exceed \$175,000.

4.2 Additional Assignment

- 4.2.1 Unless expressly agreed otherwise in a properly executed amendment to the Agreement, any additional Assignment made by the Mayor under this Agreement may

be invoiced under the terms of this Agreement. The approved Assignment and shall not alter the terms of this Agreement and shall be deemed to be invoiced in the same manner set forth below. The additional Assignment shall be deemed to be an addition to the Scope of Work herein under the do-not-exceed provision of this Agreement.

5. **Invoicing/Payments.**

- 5.1. The technology Consultant will submit weekly detailed invoices to the Director of Finance for review and approval by the City. Each invoice shall include the tasks performed, the date each task was performed, a designation of the person providing the service, the amount of time spent on the task being billed, at quarter-hour increments and the sum due for the service.
- 5.2. If the City determines that any task is beyond the Scope of Services under the Agreement or any additional pre-approved Assignment authorized by the Mayor, the City shall provide the Technology Consultant prompt written notice of the finding. The parties shall work to rectify any issue on the amount of any invoice, the scope of the work performed or related dispute so as not to interrupt services. In no event will the City be responsible for the payment for any tasks outside the scope of Services or any Assignment authorized by the Mayor.
- 5.3. Payments shall be made within 45 days of invoicing.

6. **Independent Contractors.**

- 6.1 Any Services and/or Additional Services provided by Technology Consultant or any subconsultant under this Agreement are provided as independent contractors. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. All persons engaged in any of the Services or Additional Services performed pursuant to this Agreement shall at all time and places subject to Technology Consultant's sole direction, supervision and control. Technology Consultant shall exercise control over the means and manner in which, its employees and sub-consultants perform the Services. Technology Consultant does not have the power or authority to bind the City in any promise, agreement, or representation unless expressly agreed to in writing by the parties.

7. **Document Ownership.**

The City shall be the owner of all data, information, drawings, plans, specifications, reports, manuals, and all other materials collected or prepared initially and/or during the provision of any Services herein. This Agreement is not intended to authorize or permit the transfer of ownership of intellectual property in any form of the public data or information gathered from, by or for the City. City retains any and all intellectual property rights.

8. **Indemnification.**

Technology Consultant, its employees, agents, servants, sub-consultants, contractors, sub-contractors, successors, assigns and/or anyone acting under Technology Consultant's control and/or direction, directly and/or indirectly, hereby agrees to release, hold harmless, and

indemnify the City, its officers, elected officials, agents, representatives, employees acting within the scope of their official duties, insurers, engineers, attorneys, consultants, sub-consultants, successors and assigns from and against any and all damages, costs, claims, demands, suits, causes of actions, and expenses (including but not limited to reasonable attorneys' fees) to the extent caused by the negligent acts, errors, or omissions of Technology Consultant, its employees, sub-consultants, agents, servants, contractors, sub-contractors, successors, assigns, and/or anyone acting under the Technology Consultant's control and/or direction, directly and/or indirectly, in the performance of the requirements of this Agreement. Technology Consultant shall defend any lawsuit commenced against the City and shall pay any and all judgments, costs and/or expenses connected with, directly and/or indirectly, such proceeding which are based upon the negligent acts or omissions of the Technology Consultant or its employees, agents, servants, sub-consultants, contractors, sub-contractors, successors, assigns and/or anyone acting under the Technology Consultant's control and/or direction. This Section shall survive the termination of this Agreement.

9. Termination.

- 9.1. The City shall have the right to terminate this Agreement at any time and for any reason, which termination shall be effective upon the City providing a thirty (30) day written notice to Technology Consultant. In the event that City elects to terminate this Agreement prior to Technology Consultant performance of all of the Services required hereunder, Technology Consultant shall cease performing work for the City and shall minimize ordinary and reasonable expenses incurred on behalf of the City.
- 9.2. Technology Consultant shall have the right to terminate this Agreement in the event of substantial failure of City to perform in accordance with the terms hereof through no fault of Technology Consultant. Without limiting the foregoing, if the City is more than ninety (90) days delinquent on any payment that is due and owing to Technology Consultant, and which is not disputed by City, such delinquency will constitute a substantial failure by the City to perform in accordance with the terms hereof. As a condition precedent to Technology Consultant's ability to terminate the Agreement, Technology Consultant shall have provided the City with written notice of the delinquency and provided the City with thirty (30) days in which to cure the delinquency.
- 9.3 In the event of termination of this Agreement, Technology Consultant shall deliver to the City copies of all data collected and materials prepared pursuant to this Agreement not later than ten (10) days after such notice of termination and the City shall pay Technology Consultant the reasonable value for services satisfactorily rendered prior to termination; provided, however, the City shall not in any manner be liable for lost profits that might have been made by Technology Consultant had this Agreement not been terminated or had Technology Consultant completed the services required by this Agreement.

10. Insurance.

- 10.1. Insurance Terms. Prior to and during the performance of any Services covered by this Agreement, Technology Consultant shall provide to the City within thirty (30) days of execution of this Agreement, in a form and substance acceptable to the City, evidence that it has obtained and maintains in full force and effect during the term of this

Agreement a policy of professional liability insurance, providing coverage of at least One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate against negligent acts, errors, or omissions in connection with the Services to be provided by Technology Consultant under this Agreement. The City shall be provided ten (10) days advance written notice of any cancellation of said professional liability insurance. In addition to professional liability insurance, Technology Consultant shall obtain insurance of the types and amounts described as follows:

- 10.1.1. Commercial General Liability insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.
 - 10.1.2. Worker's Compensation and Occupational Disease Disability Insurance as required by the laws of the Commonwealth of Pennsylvania.
 - 10.1.3. Professional Liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.
- 10.2. Insurance Requirements. Upon written demand, Technology Consultant shall cause the aforesaid insurance policies to be duly and properly endorsed by insurance underwriters as follows:
- 10.2.1. To provide the City is endorsed as an additional insured on Technology Consultant's Commercial General Liability insurance to the extent necessary to implement the indemnity obligations contained in Section 8.
 - 10.2.2. To contain a standard and cross liability and severability clause as to the general liability insurance.
 - 10.2.3. To provide that aforesaid general liability insurance shall be primary in all instances with respect to the City insurance, which shall be considered secondary or excess at all times, but only to the extent necessary to implement the indemnity obligations contained herein.
 - 10.2.4. To provide contractual liability coverage under Technology Consultant's Commercial General Liability insurance for liability assumed under the terms of this Agreement, subject to all policy terms, conditions, and exclusions.
 - 10.2.5. To provide the City with at least ten (10) days prior written notice of cancellation or change in coverage.

11. Force Majeure.

The City, Technology Consultant, and any Technology Consultant's sub-consultants shall not be held responsible for any delay, default, or nonperformance directly caused by an act of God, unforeseen adverse weather events, accident, labor strike, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, act of federal or state government, labor, material, equipment, or supply shortage. Notwithstanding the foregoing, such delays, defaults, or nonperformance shall result from matters that would not be reasonably foreseen by Technology Consultant exercising reasonable due diligence.

12. Pennsylvania Right to Know.

Technology Consultant acknowledges, understands, and agrees that any information received by the City may be subject to the Pennsylvania Right to Know Law, 65 P.S. § 67.101 *et seq.* Technology Consultant's duties regarding the Right To Know Law are continuing duties that survive the expiration of this Agreement.

13. Non-Discrimination.

Technology Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the Services of the Technology Consultant to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

14. Severability.

If any terms or provisions or portions thereof of this Agreement or application thereof become invalid, the remainder of said term or provision and/or portion thereof of this Agreement shall not be affected thereby; and, to this end, the parties hereto agree that the terms and provisions of this Agreement are severable.

15. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

16. Time is of the Essence.

The Parties agree that the time for performance of all obligations, duties and responsibilities as set forth herein is deemed of the essence.

17. Notices.

All notices or other communications required to be given under this Agreement shall be in writing and shall be sent certified mail, postage prepaid, addressed as follows:

TO THE CITY:

Mayor Eric Papenfuse
City of Harrisburg
123 Walnut Street, Suite 212
Harrisburg, PA 17101
(717) 255-3178

TO : Technology Consultant:

Jeffrey M. Briel
SIGMA RESOURCES
Strawberry Square
320 Market St., Suite 473B
East Harrisburg, PA 17101
Phone: 717.614.0605
jbriel@sigma-resources.com

With a copy to:

City Solicitor
City of Harrisburg
10 North Second Street
Suite 402
Harrisburg, PA 17101

With a copy to:

Brian Kaleida, President
SIGMA RESOURCES
7950 Saltsburg Road
Pittsburgh, PA 15239
Phone: 412.712.1070

(717) 255-3065

Fax: 412.712.1033
info@sigma-resources.com

Or to such other addresses and to the attention of such other person or persons as any of the parties may notify the other in accordance with the provisions of this Agreement. All such notices shall be deemed to have been given when mailed by certified mail or delivered by hand.

18. Entire Agreement.

This Agreement constitutes the entire Agreement between the parties and supersedes all prior negotiations, understandings, and agreements of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Agreement shall be effective against any party unless the party shall have consented thereto in writing. This Agreement shall be interpreted as being drafted by both parties, as both Parties have had an opportunity to review and negotiate this Agreement with their respective legal counsel and this Agreement is created based upon those negotiations; therefore, the parties agree that this Agreement shall not be construed in favor or against either party as the drafter of this Agreement.

19. Applicable Law/Venue/Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. In the event of dispute, the venue of any action brought hereunder, shall be in the Court of Common Pleas in and for Dauphin County, Pennsylvania.

20. Captions.

The captions used herein are for convenience purposes only.

21. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22. Assignment.

Technology Consultant may not assign this Agreement. The City may freely assign this Agreement so long as such assignment is to a governmental body or authority.

IN WITNESS WHEREOF, the parties hereto set their respective seals to this Agreement on the Effective Date.

ATTEST:

SIGMA RESOURCES LLC

_____ (SEAL)

BY: _____

TITLE:

ATTEST:

CITY OF HARRISBURG

CITY OR HARRISBURG:

Eric Papenfuse, Mayor Date

Charles DeBrunner, Controller Date

APPROVED AS TO FORM AND LEGALITY:

Neil A. Grover, Solicitor Date

*The City of Harrisburg is governed under Pennsylvania's Optional Third Class City Law Charter, 53 P.S. § 41101, et seq. Section 53 P.S. § 41413(c) of the law requires that "all bonds, notes, contracts and written obligations of the city shall be executed on its behalf by the mayor and the controller.

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017 RESOLUTION NO. -2017

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:


City Solicitor

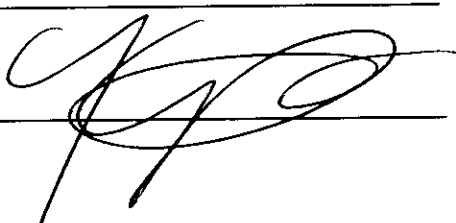
6/27/2017
Date

Requested by Department/Bureau: MAYOR/COMMUNICATIONS/IT

Department/Bureau Contact Person: JOYCE PAUD/JEFF EDWARDS/MAYOR

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: 

Date: 6-27-17