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CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Economic and International Development

AGENDA DATE: CCA Regular December 17, 2019

CONTACT PERSON: Elizabeth Triggs, Assistant Director (915) 212-1619
triggsEK@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

That the City Manager be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and FOCUSED ADVOCACY, LLC, a Texas limited liability company, for professional consulting services related to increasing investment opportunities within the City of El Paso, for a term of six (6) months beginning on January 1, 2020, for a fee of TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) per month, and reimbursement of travel expenses.

BACKGROUND/DISCUSSION:

The purpose of this contract is to assist the City in its efforts to secure participation in the State Convention Center Hotel Program, including the drafting and submitting requests for private letter rulings to the State Comptroller for applicable hotel renovation and new construction projects. The Contractor will additionally provide assistance with other relevant economic development projects requiring state coordination.

PRIOR COUNCIL ACTION:

Incentive agreements have been approved by Council for each of these projects.

AMOUNT AND SOURCE OF FUNDING:

\$72,000 plus reimbursement of reasonable travel expenses. Source: 999-544050-9999-1000

BOARD/COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



For: Jessica Herrera, Economic & International Development

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement for Professional Services by and between the CITY OF EL PASO and **FOCUSED ADVOCACY, LLC**, a Texas limited liability company, for professional consulting services related to increasing investment opportunities within the City of El Paso, for a term of six (6) months beginning on January 1, 2020, for a fee of **TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00)** per month, and reimbursement of travel expenses.

ADOPTED THIS _____ **DAY OF** _____ **2019.**

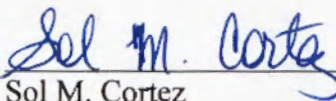
CITY OF EL PASO:

Dee Margo, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Cary Westin, Sr. Deputy City Manager
Economic Development & Tourism

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("**Agreement**") is executed effective for all purposes as of the 1st day of January, 2020 ("**Effective Date**") by and between the **CITY OF EL PASO**, a Texas home-rule municipal corporation ("**City**") and **FOCUSED ADVOCACY, LLC** ("**Contractor**"), a limited liability corporation authorized to do business in the State of Texas. Collectively, the City and the Contractor shall be referred to as the "**Parties**".

RECITALS

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, a procurement for personal, professional or planning services are exempt from the competitive bid or proposal requirement; and

WHEREAS, the City desires to engage the Contractor to provide professional consulting services related to increasing investment opportunities and economic development projects within the City of El Paso; and

WHEREAS, the Consulting Services to be provided pursuant to the Scope of Services are professional services requiring special knowledge, learning and skills; and

WHEREAS, the Contractor possesses the knowledge, learning and skills to perform these Consulting Services for the City and desires to perform these Consulting Services for the City.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I. Scope of Services

- 1.1 The Contractor will perform the Scope of Services as described in **Exhibit "A"** (the "Consulting Services"). The Contractor will provide all materials, employees, permits, licenses and all other items needed to complete the Services.
- 1.2 All aspects of the Contractor's Consulting Services for the City shall be coordinated with the Office of the City Manager, and the respective departments. As and if applicable, all

aspects of the Law Offices of Snapper L. Carr's legal representation of the City shall be coordinated with the Office of the City Attorney. Mr. Carr's Law Office has provided legal services on utility matters, separate and apart, from the Consulting Services provided by the Contractor. Future legal representation of the City by the Law Offices of Snapper L. Carr will continue to be handled by separate legal engagement as needed. The Contractor does not provide legal services and this agreement does not cover legal services and all decisions to engage additional legal services or representation rests solely with the City.

ARTICLE II. Consideration

- 2.1 Fees. Commencing on the Effective Date, the fee for the above-described services shall be TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) per month for six (6) months, and shall be paid by the City to the Contractor in monthly installments. The Contractor agrees that at no time will the Contractor make a claim against the City for more than the rate provided under the terms of this Agreement.
- 2.2 Expenses. The City will reimburse Contractor for any reasonable and customary expenses related to any travel requested of the Contractor by the City (i.e. - airfare, mileage, rental cars, taxis, hotels, travel-related meals), in accordance with the City's travel policy.
- 2.3 Payment. The Contractor shall bill the City by the fifteenth (15th) day of each month for the previous month's services with the first invoice being due February 15, 2020 for services provided during the month of January 2020 and the final invoice being due January 15, 2021 for services provided during the month of December 2020. The Contractor agrees that all invoices will include an itemized statement on Contractor letterhead for actual services rendered or expenses incurred under this Agreement. The City agrees to pay the Contractor in accordance with Section 2251 of the Texas Government Code.

All invoices shall reflect the City's purchase order number and shall be submitted to:

City of El Paso
Attn: Director, Economic & International Development
P.O. Box 1890
El Paso, TX 79901-1890.

ARTICLE III. Term and Termination

- 3.1 **Term.** The Contractor shall perform the Consulting Services for six (6) months, commencing on the Effective Date of this Contract. ("**Contract Period**"), unless sooner terminated in accordance with this Article.

- 3.2 **Termination.** Either party may terminate the Agreement at any time without cause, upon ninety (90) days written notice to the other party in accordance herewith. In the event the City terminates this Agreement, the City is responsible for and the Contractor shall be fully compensated by the City for any outstanding invoices.
- 3.3 **Termination by Mutual Consent.** The Parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.
- 3.4 **Non-Appropriation of Funds.** If funds are not appropriated by the City to cover payment obligation(s) under this Agreement, then the City may terminate this Agreement. If the City terminates this Agreement under this provision, then the City is not obligated to make any payments described in this Agreement.
- 3.5 **Termination Not A Release.** Termination by either party is not a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party is not relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

ARTICLE IV. Insurance and Indemnification

- 4.1 **INDEMNIFICATION. Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally**

establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause. This provision survives the term of the Agreement.

4.2 The Contractor will provide the City and maintain throughout the Term of this Agreement the insurance policies as described in this Section. Prior to performing any Services, Contractor will provide the City copies of all insurance policies along with all endorsements and certificates of insurance. The Contractor will provide the City all certificates evidencing renewal or replacement of said policies of insurance at least 15 days prior to the expiration or cancellation of any such policies.

A. Liability Insurance from a solvent company authorized to do business in the State of Texas. The liability insurance must provide coverage for the Contractor and its employees in the minimum amounts of \$1,000,000.00 per occurrence for bodily injury or wrongful death and One Million Dollars \$1,000,000 per occurrence for property damage. The Contractor will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the Contractor is performing services near any railroad or streetcar track, then the Contractor will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence.

B. Workers Compensation. If required by law, the Contractor will obtain a third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

C. Auto Liability. Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Contractor, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than \$1,000,000.00 for each occurrence Combined Single Limit for Bodily Injury and Property Damage.

D. **Professional Liability Insurance.** Professional Liability Insurance for the benefit of the City to cover the errors and omissions of the Contractor, its principals or officers, agents or employees in the performance of this Agreement with a limit of \$1,000,000.00 on a claims made basis.

E. **Form of Policies.** The Contractor may provide the insurances required in this Section in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.

ARTICLE VI. General Administrative Provisions

- 6.1 **Governmental Function.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- 6.2 **Independent Contractor Relationship.** Nothing in this Agreement creates an employer-employee relationship between the parties. The City is not subject to any obligations or liabilities of the Contractor incurred in the performance of this Agreement.
- 6.3 **No Third Party Beneficiaries.** This Agreement is entered for the benefit of the City and the Contractor only. No third party has any rights to enforce any obligations or rights under this Agreement.
- 6.4 **Modification of Agreement.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in a writing of equal dignity hereto. No evidence of any waiver or modification shall be offered or received in evidence of any proceeding arising between the Parties out of or affecting this Agreement, or the rights or obligations of the Parties under this Agreement, unless such waiver or modification is in writing of equal dignity hereto. The Parties further agree that the provisions of this Article cannot be waived.
- 6.5 **Place of Performance.** The Contractor shall perform the Consulting Services in Austin, Texas unless otherwise directed by the City Manager or designee. Any travel required outside of Austin, Texas must be approved in advance by the City Manager or designee.
- 6.6 **Ownership of Work Product.** It is understood by the Contractor that the materials produced and provided under this Agreement are the property of the City and shall be returned to them upon request.

6.7 **Auditing Records for the Specific Project.** The Contractor will make available to the City for inspection and copying all records which have a bearing on matters pertaining to the Scope of Services performed under this Agreement.

6.8 **Notices.** The parties will send all notices required or allowed under this Agreement, in writing and by certified mail or in person, to the addresses described in this Section. All notices are deemed received 3 calendar days following the postmark date on the notice.

CITY: City of El Paso
Attn: Tomás González, City Manager
P.O. Box 1890
El Paso, Texas 79901-1890

COPY TO: City of El Paso
Attn: Cary Westin, Sr. Deputy City Manager
P.O. Box 1890
El Paso, Texas 79901-1890

COPY TO: City of El Paso
Attn: Director, Economic and International Development
P.O. Box 1890
El Paso, Texas 79901-1890

CONTRACTOR: Focused Advocacy, LLC
816 Congress Avenue, Suite 370
Austin, Texas 78701

6.9 **Venue.** For purposes of determining the place of the Agreement and the law governing the same, it is agreed that the Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the courts of El Paso County, Texas.

6.10 **Governing Law.** This Agreement is governed by Texas law.

6.9 **Compliance with Laws.** Contractor will comply with all applicable federal and state statutes, ordinances, administrative orders, rules or regulations, in addition to any local laws or ordinances relating to its activities and performance under this contract and will procure all licenses and pay all fees or other charges as required, if applicable.

- 6.10 **Assignment.** This Agreement is binding on the City and the Contractor, and the Contractor's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- 6.11 **Waiver.** Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.
- 6.12 **Severability.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity does not affect the remaining provisions of this Agreement.
- 6.13 **Confidentiality.** The City will handle all release of information obtained under this Agreement as required under the Texas Public Information Act. The Contractor agrees to the release of this Agreement pursuant to a request made under the Texas Public Information Act. This clause survives the completion or termination of this Agreement.
- 6.14 **Captions.** The captions of this Agreement are for information purposes only, and in no way affect the substantive terms or conditions of this Agreement.
- 6.15 **Authority to Contract.** The person signing this document on behalf of the Contractor warrants that he or she has been duly authorized to sign this Agreement on behalf of the Contractor and to bind the organization, its officers, agents and employees.
- 6.16 **Entire Agreement.** This Agreement constitutes the entire agreement by the parties.

(Signatures Begin on the Following Page)

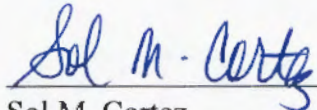
IN WITNESS WHEREOF, the parties have hereunto set their hands this _____ day
of _____, 2019.

CITY OF EL PASO

Tomás González, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Sol M. Cortez
Senior Assistant City Attorney

Cary Westin, Sr. Deputy City Manager
Economic Development & Tourism

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2019,
by Tomás González, City Manager, City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(Signatures Continue on the Following Page)

CONTRACTOR:

FOCUSED ADVOCACY, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2019, by Snapper Carr, Partner, Focused Advocacy, LLC.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT A
Scope of Services

EXHIBIT A
Scope of Services

The Contractor will:

1. Assist the City with economic development projects and opportunities including hotel convention center projects;
2. Stay abreast of relevant Texas state laws and regulations related to the public financing programs with a focus on “qualified convention center and hotels” using state tax rebates pursuant to Chapter 351, Texas Tax Code;
3. Review and help develop documents related to economic development project (ie - pre-development agreements, master development agreements, Chapter 380 agreements, bond covenants and other related instruments);
4. Provide general advice and guidance to the City about projects regarding finance structure, ownership structure, and other related issues;
5. Assist the City in their efforts to submit to the Comptroller of Public Accounts (CPA) requests for a private letter ruling such:
 - a. Assisting with drafting formal requests for private letter rulings,
 - b. Preparation of all ancillary materials required to be submitted to the CPA, and
 - c. Preparing responses to subsequent requests for additional material;
6. Assist the City in their efforts to submit to the Comptroller of Public Accounts (CPA) an application for rebates related to the construction of the Courtyard Marriott Hotel in Downtown El Paso, including:
 - a. Assisting with the drafting of the application;
 - b. Preparation of ancillary materials required with application submission; and
 - c. Preparing responses to subsequent request for additional material.
7. Represent the City’s interests before CPA regarding the project and work to secure positive responses;
8. Arrange meetings between City officials and CPA staff when necessary; and
9. Brief and prepare City officials for meetings with the CPA.

2. Limited Scope of Services

Both parties agree that the scope of services and the compensation related to this agreement are expressly limited to the services detailed above and do not include services for:

- a. Legislative advocacy services at the Texas Legislature or regulatory services at state agencies other than the CPA, or

Any additional services requested by the City will necessitate an amendment to this contract with new terms and compensation.