



## Agreement - Consulting Services

### City of Pflugerville & Focused Advocacy

It is agreed effective April 1, 2016 that **Focused Advocacy, LLC**. ("Consultant") as located at 823 Congress Avenue, Suite 1200, Austin, Texas 78701 will for the following compensation and under the following terms and conditions provide the **City of Pflugerville** ("the City") as located at 100 East Main Street, Ste. 300 Pflugerville, TX 78691 with the following scope of services:

#### Scope of Services:

Consultant will:

1. Represent the City's general interests before the Texas legislature as directed by the City Manager or is designee;
2. As directed, represent the City's interests before the regulatory bodies of Texas and various state agencies of the Texas executive branch by informing the City of key state agency hearings and developments at the Texas Water Development Board, the Texas Commission on Environmental Quality, the Texas Land Office, the Comptroller of Public Accounts, the Public Utility Commission, the Texas Department of Transportation, and the Department of Housing and Community Affairs;
3. As directed, engage with state agency staff and personnel to protect or advance the city's interests during rule-makings;
4. Assist in the development of the City's legislative agenda;
5. Assist with the development and passage of legislative initiatives as adopted by the City Council;
6. Provide general guidance and consultation to the city regarding the City's legislative and regulatory goals;
7. Develop strategies and generally work to gain support to advance the City's legislative and regulatory goals;

8. Work to defeat legislation the City deems detrimental;
9. Provide the City with timely updates regarding the status of pending legislation and rule makings;
10. Provide the City with an electronic tracking system which monitors the progress of legislation that could affect the City;
11. Advise and inform the City of upcoming legislative committee hearings (both during the legislative session and during the interim);
12. Assist with the preparation and drafting of legislation and amendments;
13. Assist with the preparation and drafting of letters, speeches and other advocacy materials;
14. Assist with the preparation of City officials who testify before legislative bodies; and
15. Attend and monitor on the City's behalf legislative hearings, agency hearings, stakeholder meetings, TML meetings, and interim legislative committee hearings.

**Points of Contact:**

Unless directed otherwise by the City Manager, the City Manager and City Attorney shall act as the points of contact for the City. Brandon Aghamalian and Snapper Carr shall act as the points of contact for Consultant. Consultant will take its direction and work orders from the City Manager or his designee.

**Term:**

The term of this contract shall be for 24 months from April 1, 2016 until March 31, 2018.

At the mutual agreement of both parties, this contract may be renewed for one additional 24 month period.

**Termination:**

In any event that the City does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (As mandated by Section 5, Article XI, Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such

termination by giving contractor a written notice of termination at the end of its then current fiscal year.

This agreement otherwise may be terminated by the City, with or without cause, by providing Consultant with thirty days (30) written notice effective from the date written notice is delivered to either party. In the event of termination, the City is responsible for and Consultant shall be fully compensated by making payment of an early termination fee of \$26,050 (90 day equivalent).

The City may also terminate the contract with thirty days (30) written notice if termination is caused by a conflict of interest as governed by Chapter 305, Government Code regarding legislation that cannot be resolved between the City and another client of the Consultant regarding a specific piece of legislation, without any early termination fee obligation.

**Retainer Compensation & Billing:**

In consideration for the performance of the services outlined in this agreement during the period covered by this agreement, the City agrees to pay Consultant \$8,683.33 per-month.

Monthly invoices will be sent on or around the 1<sup>st</sup> day of each month and payable by the 15<sup>th</sup> day of each month.

Payment shall be either electronically deposited directly to the bank account provided by the Consultant or otherwise mailed to Focused Advocacy at 823 Congress Avenue, Suite 1200, Austin, Texas 78701.

**Expenses:**

The City will reimburse Consultant for any reasonable and customary expenses related to any travel requested of the Consultant by the City (i.e. - airfare, mileage, rental cars, taxis, hotels, travel-related meals). All travel expenses submitted for reimbursement will be accompanied by receipt if the individual expense exceeds \$50 (fifty-dollars).

The City will also reimburse Consultant its pro-rata share of the actual costs incurred by Consultant for attending the annual convention of the Texas Municipal League (TML) (i.e. - hotel, airfare, transportation, meals, and registration).

The City agrees to reimburse these expenses at the same time it pays the monthly retainer.

**Compliance with Texas Ethics Laws:**

Consultant agree to comply with all applicable state lobby registration and reporting laws and with all applicable state authorities including the Texas Ethics Commission.

**Conflicts of Interest:**

Should any other client of Consultant take a position on a piece of legislation that is in opposition to the position of the City or should Consultant believe that its representation of the City is materially affected by the position taken by another client, Consultant will comply with all applicable state laws regarding conflicts of interest and will notify in writing the City within two (2) business days from the date Consultant became aware of the conflict. Consultant must obtain written permission from the City to continue its representation.

If the conflict is between the City and a private sector company, then Consultant shall resolve the conflict in favor of the City.

**Consultant Relationship:**

It is understood by the parties that Consultant is an independent Consultant for the purposes of any federal and/or state laws including tax laws, and that Consultant is not in any way an employee, full or part-time of Client.

**Confidentiality:**

If a party provides information or materials indicated to be confidential, the receiving party will maintain the confidentiality of such matters and not disclose any such information except in proper performance of this agreement and as required by law. It is understood by Consultant that the materials produced and provided under this agreement are the property of the City and shall be returned to them upon request.

**Payment Provisions.**

The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. The City reserves the right to modify any amount due to contractor presented by invoice to the City if necessary to conform the amount to the terms of the contract.

**Abandonment or Default.**

If contractor abandons or defaults on the work on the contract and causes the City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

**Disclosure of Litigation.**

Consultant shall disclose any civil or criminal litigation or investigation pending which involves consultant or which has occurred in the past in which the respondent has been

judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

**Compliance with other laws and certification of eligibility to contract.**

Any offer to contract with the City shall be considered an executed certification that the contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. ***Additionally, such offer shall indicate that the contractor has fully read and understood the terms and conditions for eligibility to contract with the City pursuant to Chapter 38 of the City's Ordinances and certifies they are in compliance with those local requirements.*** When requested, the contractor shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.

**Compliance with all Codes, Permitting and Licensing Requirements.**

The successful contractor shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The successful bidder shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.

**Liability and Indemnity of City.**

Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. (Section 5, Article XI, Texas Constitution)

**Indemnity and Independent Contractor Status of Contractor.**

Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that the contractor and any employee or sub-contractor of contractor shall not be considered an employee of the City.

The contractor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all contractor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

**Tax Exemption.**

The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code), and federal excise tax (Subtitle D of the Internal Revenue Code) for certain purchases. Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed, the City will remit payment less sales tax.

**Contractual Limitations Period.**

Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

**Sovereign Immunity.**

Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.

**Governing Law and Venue.**

Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Travis County, Texas.

**Entire Agreement and Modifications.**

This Agreement contains the entire agreement and understandings of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreement or understandings, whether oral or written, negotiations and discussion. This Agreement may not be modified, rescinded or terminated orally, and no modification, rescission, termination or attempted waiver of any provision hereof (including this section) shall be valid unless in writing and signed by both parties.



City Signature



Focused Advocacy Signature

Brandon Wade, City Manager  
Printed Name & Title

BRANDON ADRIAN, PRESIDENT  
Printed Name & Title

March 22, 2016  
Date

March 22, 2016  
Date