

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

AGENDA DATE: June 7, 2022
PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Lindsey Adams, 915-212-1622
Elizabeth Triggs, 915-212-1619

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 6: Set the Standard for Sound Governance and Fiscal Management

SUBGOAL:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

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 legislative services, in the amount of \$10,000 per month, for a term of twelve (12) months beginning July 1, 2022 and ending June 30, 2023, with two options to extend for one additional year at the same terms.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The Agreement contracts Focused Advocacy, LLC to represent the City's general interests before the Texas Legislature and perform other lobbyist functions, including but not limited to aiding in the development of the City's legislative agenda and the development and passage of City Council adopted legislative initiatives

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The parties had a prior Professional Services Agreement, approved by Council, for similar legislative services which will expire June 30, 2022.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Compensation for the term of this Agreement shall not exceed \$120,000.00 and will be paid in monthly installments of \$10,000.00 for twelve (12) months. Source: 480-2533-48020-522150.

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? _X_ YES ___ NO

PRIMARY DEPARTMENT: Economic Development
SECONDARY DEPARTMENT:

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

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 legislative services, in the amount of \$10,000 per month, for a term of twelve (12) months beginning July 1, 2022 and ending June 30, 2023, with two options to extend for an additional year at the same terms.

APPROVED THIS _____ DAY OF _____ 20__.

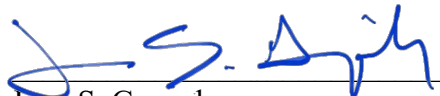
CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Sr. Assistant City Attorney

APPROVED AS TO CONTENT:



Elizabeth Triggs
Director
Economic and International Development

STATE OF TEXAS §
 § **PROFESSIONAL SERVICES AGREEMENT**
COUNTY OF EL PASO §

This Professional Services Agreement (“***Agreement***”) is executed effective for all purposes as of the ____ day of _____, 20__ (“***Effective Date***”) by and between the **CITY OF EL PASO**, a Texas home-rule municipal corporation (“***City***”) and **FOCUSED ADVOCACY, LLC**, a Texas limited liability company (“***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 legislative services; 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 Mayor; the Office of the City Manager; the Office of the City Attorney; and respective departments. The Legislative Attorney shall be the point of contact for all services outlined

in the Scope of Services as described in Exhibit “A”, except for the work outlined in paragraphs 19 through 29 of Exhibit “A” relating to COVID-19 and economic stimulus funding opportunities. The City Manager, or his designee, shall act as the point of contact for the work outlined in paragraphs 19-20 of Exhibit “A”.

- 1.3 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 July 1, 2022, the fee for the above-described services shall be \$120,000.00 for twelve months, and shall be paid by the City to the Contractor in monthly installments of \$10,000.00. 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 not pay or reimburse Contractor for any customary expenses related to this Agreement.
- 2.3 Maximum Fees and Expenses. Under no circumstances shall the City be obligated under this Agreement to pay Contractor any amount in excess of a total of \$120,000.00 for the term covering July 1, 2022 through June 30, 2023.
- 2.4 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 August 15, 2022 for services provided during the month of July 2022 and the final invoice being due July 15, 2023 for services provided during the month of June 2023. 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

ARTICLE III. Term and Termination

- 3.1 **Term.** The Contractor shall perform the Consulting Services for twelve (12) months, commencing at 12:00 a.m. on July 1, 2022 and ending at 11:59 p.m. on June 30, 2023. (“***Contract Period***”), unless sooner terminated in accordance with this Article. The City, by and through its City Manager, shall have two options to extend this Agreement for an additional one-year period upon mutual written agreement prior to the expiration of this Agreement.
- 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: City Attorney
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.
- 6.11 **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.

- 6.12 **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.
- 6.13 **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.
- 6.14 **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.
- 6.15 **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.
- 6.16 **Captions.** The captions of this Agreement are for information purposes only, and in no way affect the substantive terms or conditions of this Agreement.
- 6.17 **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 _____, 20__.

CITY OF EL PASO:

Tomás González, City Manager

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

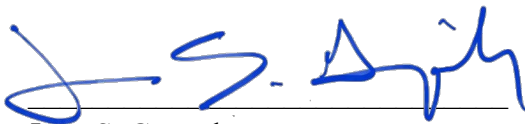
This instrument was acknowledged before me on the ____ day of _____,
20__, by Tomás González, City Manager, City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior Assistant City Attorney



Elizabeth Triggs
Director
Economic & International Development

(Signatures Continue on Following Page)

CONTRACTOR:

**FOCUSED ADVOCACY, LLC a Texas
limited liability company**

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____,
20____, by _____, _____ (Title), for **Focused Advocacy, LLC, a Texas
limited liability company.**

Notary Public, State of Texas

My Commission Expires:

EXHIBIT A

Scope of Services

The Contractor will:

1. Represent the City's general interests before the Texas legislature as directed by the Mayor or City Manager or their 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 bearings 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 administrative rule-making proceedings;
4. Assist in the development of the City's legislative agenda;
5. Develop and execute a plan of action to lobby the state legislature and work with elected officials and state agencies on the passage of legislation identified by the City as priority legislative initiatives.
6. Assist with the development of legislative initiatives as adopted by the City Council;
7. Provide general guidance and consultation to the City regarding the City's legislative and regulatory goals;
8. Develop strategies and generally work to gain support to advance the City's legislative and regulatory goals including but not limited to advancing the City's applications for qualified hotel projects and funding for an intelligent transportation system;
9. Work to defeat legislation the City deems detrimental;
10. Provide the City's Legislative Attorney and/or the Legislative Liaison with timely updates, at least on a weekly basis, regarding the status of the priority legislative initiatives, pending legislation and rule makings;
11. Provide the City with an electronic tracking system which monitors the progress of legislation that could affect the City;
12. Advise and inform the City of upcoming legislative committee hearings both during the legislative session and during the interim;
13. Assist with the preparation and drafting of legislation and amendments;

14. Assist with the preparation and drafting of letters, speeches and other advocacy materials;
15. Assist with the preparation of City officials who testify before legislative bodies;
16. Attend and monitor on the City's behalf legislative hearings, agency hearings, stakeholder meetings, TML meetings, and interim legislative committee hearings;
17. Come to El Paso periodically at the request of the Mayor or City Manager to meet with City Council members, the City Manager, and City staff on state issues and concerns; and
18. Schedule meetings for appropriate City personnel with the state elected officials and agency representatives, as requested by the Mayor or designee.
19. Monitor, report, and advise City of Federal initiatives related to COVID-19, infrastructure and economic stimulus funding opportunities, including but not limited, to assistance with seeking direct allocations of future State and Federal allocations. Contractor will work as a liaison between the State and Federal levels of government to help ensure the City maximizes all funding opportunities.
20. In fulfilling its responsibilities under this Agreement, Contractor shall act in the name of the City of El Paso, Texas and, unless directed otherwise, the City Legislative Attorney shall act as the point of contact for the City for all work outlined above except for the work outlined in paragraph 18 relating to COVID-19 and economic stimulus funding opportunities. The City Manager, or his designee, shall act as the point of contact for the work outline in paragraph 18. Brandon Aghamalian and Snapper Carr shall act as the point of contact for Contractor. Contractor will take its direction and work orders from the City Legislative Attorney or the City Manager, as applicable.