MO# 09182018-02

THE STATE OF TEXAS §

Professional Services Agreement

COUNTY OF TARRANT §

THIS PROFESSIONAL SERVICES AGREEMENT is entered into this day of September 27, 2018, by and between the **CITY OF ARLINGTON, TEXAS**, a municipal corporation located in Tarrant County, Texas (hereafter referred to as "Client"), acting by and through its City Manager or his designee, and **MCGUIREWOODS CONSULTING**, having its principal place of business at 816 Congress Avenue, Suite 940, Austin, Texas 78701. (hereinafter referred to as "Consultant") for the provision of public affairs consulting services related to the Client.

W I T N E S S E T H :

WHEREAS, the Arlington City Council finds that there are many items brought before the Legislature of the State of Texas that may directly affect the public health, safety or welfare of the residents of the City of Arlington; and

WHEREAS, the Arlington City Council further finds that there is a need to inform the Legislature of the State of Texas on proposed or needed state legislation necessary for or detrimental to the protection of the public health, safety and welfare of the residents of the City of Arlington; and

WHEREAS, the Arlington City Council also finds that many state agencies of the State of Texas propose and pass rules that directly affect the public health, safety and welfare of the residents of the City of Arlington; and

WHEREAS, the Arlington City Council believes that there is a need to inform state agencies on proposed or needed rules necessary for, or detrimental to the public health, safety or welfare of the residents of the City of Arlington; and

WHEREAS, the Arlington City Council finds it to be a public purpose and in the best interest of the residents of the City of Arlington to engage the services of Consultant to inform the Legislature and state agencies of its views on either pending legislation or rules that could or would affect the public health, safety or welfare of the residents of the City of Arlington;

NOW THEREFORE,

Client and Consultant do hereby mutually agree as follows:

1. Services

Consultant will provide the services described below.

a. Assist in the coordination and development of the Client's legislative agenda;

b. Represent the Client in dealings with elected and appointed officials, legislative staff, and interested stakeholders at the state on matters identified by the Client that relate to various aspects of municipal governance with a particular emphasis on higher education, Arlington representation on district authorities, transportation funding, mental health reform and other special items as needed;

c. Identify and analyze legislation filed for potential municipal impact, with particular emphasis on higher education, Arlington representation on district authorities, transportation funding, mental health reform and other special items as needed;

d. Assess legislation, including filed bills, committee amendments, committee substitutes, conference committee reports, and floor amendments, for potential impact on Arlington's adopted legislative agenda;

e. Monitor committee and floor action for items that affect Client's legislative agenda or that may have an impact on municipalities;

f. Monitor, by attendance at meetings and otherwise, state legislative and regulatory bodies considering legislation and/or rulemaking which could impact the Client's government affairs objectives and interests;

g. Advise the Client of upcoming meetings, hearings, briefings and other formal or informal sessions in a timely manner to allow the Client an opportunity to participate in advocacy efforts;

h. Recognizing that time is of the essence in legislative and administrative proceedings, respond to the Client's inquiries and requests in a timely manner;

i. Assist in the development of a strategy to accomplish the Client's legislative goals and objectives.

j. Assist the Client in the passage of legislative initiatives that are proposed and identified by the Client prior to the legislative session(s);

k. Assist the Client to defeat legislation or other initiatives that arise throughout the term of the contract that could have a negative impact on the Client's ability to carry out its governmental and proprietary functions;

l. Identify and implement strategies to enhance the Client's profile with targeted individuals and entities including the arrangement of periodic visits and/or functions with key legislators and staff;

m. Use best efforts to provide information to and educate decision makers with regard to the Client's interests and government affairs objectives;

n. Develop handouts and leave-behinds for meetings including, one-pagers and position papers for Client personnel to distribute to elected officials and staff regarding legislation on which Client takes an official position, and arguments and statements of position;

o. Provide items related to witness testimony including, speaking points for City officials or staff who testify before House and Senate committees, and written testimony so that Client can state its position on the record even when no witness will provide oral testimony;

p. Provide weekly legislative updates; and

q. Develop presentations related to the Client's work and significant statewide bills during the state legislative session.

r. Work with other legislative consultants contracted with the Client as needed for the success of the Client's legislative agenda.

It is understood by both Client and Consultant that under this agreement Consultant will provide services only to the Client and, when opposing harmful legislation, Consultant shall not be required to provide services to any other city, to city officials of any other city, or to associations representing city officials.

2. Client Support and Communication

Consultant will provide Client both written and verbal status reports on all matters affecting Client's stated interests. Consultant will attend Client meetings, as requested and schedule permitting, to assure timely and effective communications Kwame Walker will serve as the primary contact on behalf of the Consultant. Primary contact and contract administrator for the Client shall be the Senior Management Analyst in the Communication and Legislative Affairs Department.

3. Legal Services

It is understood and agreed that Consultant is being retained hereunder to provide governmental consulting services and not to provide legal advice or services to Client. In the event that legal opinions or financial analysis are needed at any time with respect to Client's interests, the decision to seek additional professional advice and services, and from whom, shall rest exclusively with Client.

4. Entire Agreement and Modifications

All services provided under this Agreement are to conform in every respect to the following documents:

a. City of Arlington Request for Qualifications for Professional Legislative Advocacy (Lobbying) Services, Dated May 23, 2018 (hereinafter referred to as RFQ);

b. Consultant's Response to RFQ referred to during negotiations as Proposal No.1 (hereinafter referred to as Proposal No. 1) and the Consultant's Response to subsequent questionnaire referred to during negotiations as Questionnaire No. 1 (hereinafter referred to as Questionnaire No. 1).

All documents referred to above are incorporated in this Agreement by reference, however, in the case of a conflict between the Agreement and the RFQ Response and Questionnaire, the Agreement controls.

Should the scope of work outlined in paragraph 1 of this Agreement and the RFQ change significantly during the term of the Agreement, the parties mutually agree to discuss any necessary modifications to the Agreement's terms and conditions. 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 the parties hereto.

5. Term

This Agreement is effective for the period from October 1, 2018 through September 30, 2020. It may be renewed at the expiration of the contract upon the written consent of both parties for a term of two additional years.

6. Compensation

In consideration for the performance of services, fees shall be paid by Client as follows:

a. $4,000 per month for the months that the State Legislature is either in Regular Session, or in a specially called session which is related to the Client and its interests, and $3,500 per month for the remainder of the months. Consultant agrees that such fixed sum shall be full compensation for all services performed including travel and other office expenses. The fee will be billed on or about the first of each month.

b. Payment shall be made to 816 Congress Avenue, Suite 940, Austin, Texas 78701.

7. INDEMNITY AND INDEPENDENT CONTRACTOR RELATIONSHIP

It is understood by the parties that Consultant is an independent contractor 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.

THE CONSULTANT SHALL PERFORM ALL SERVICES AS AN INDEPENDENT CONTRACTOR NOT UNDER THE DIRECT SUPERVISION AND CONTROL OF THE CLIENT. NOTHING HEREIN SHALL BE CONSTRUED AS CREATING A RELATIONSHIP OF EMPLOYER AND EMPLOYEE BETWEEN THE PARTIES. THE CLIENT AND CONSULTANT AGREE TO COOPERATE IN THE DEFENSE OF CLAIMS, ACTIONS, SUITS, OR PROCEEDINGS OF ANY KIND BROUGHT BY A THIRD PARTY WHICH MAY RESULT FROM OR DIRECTLY OR INDIRECTLY ARISE FROM ANY NEGLIGENCE AND/OR ERRORS OR OMISSIONS ON THE PART OF THE CONSULTANT OR FROM ANY BREACH OF THE CONSULTANT'S OBLIGATIONS UNDER THIS AGREEMENT. IN THE EVENT OF ANY LITIGATION OR CLAIM UNDER THIS AGREEMENT IN WHICH THE CLIENT IS JOINED AS A PARTY, CONSULTANT SHALL PROVIDE SUITABLE COUNSEL TO DEFEND CLIENT AND CONSULTANT AGAINST SUCH CLAIM, PROVIDED THE CONSULTANT SHALL HAVE THE RIGHT TO PROCEED WITH THE COMPETENT COUNSEL OF ITS OWN CHOOSING. THE CONSULTANT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CLIENT AND ALL OF ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES AGAINST ANY ALL SUCH CLAIMS TO THE EXTENT OF COVERAGE BY CONSULTANT'S COMMERCIAL LIABILITY POLICY AS DESCRIBED IN PARAGRAPH 22. THE CONSULTANT AGREES TO PAY ALL EXPENSES, INCLUDING, BUT NOT LIMITED TO ATTORNEY'S FEES, AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED OR RENDERED AGAINST THE CONSULTANT'S COMMERCIAL LIABILITY INSURANCE POLICY. NOTHING HEREIN CONSTITUTES A WAIVER OF ANY RIGHTS OR REMEDIES THE CLIENT MAY HAVE TO PURSUE UNDER EITHER LAW OR EQUITY, INCLUDING, WITHOUT LIMITATION, A CAUSE OF ACTION FOR SPECIFIC PERFORMANCE OR FOR DAMAGES, A LOSS TO THE CLIENT RESULTING FROM CONSULTANT'S NEGLIGENT ERRORS OR OMISSIONS, OR BREACH OF CONTRACT, AND ALL SUCH RIGHTS AND REMEDIES ARE EXPRESSLY RESERVED.

8. Expenses

Consultant's expenses are included in the monthly fee paid in consideration for the performance of services.

9. State Law

Under Texas and federal law there are various requirements imposed on persons and organizations that interact with state officials, especially where an attempt is made to

influence legislation or contracts. In this regard, Consultant will promptly inform Client when any such filings are necessary and shall seek registration with respect to the services to be performed on Client's behalf. Consultant agrees to perform its obligations under this contract in compliance with all applicable laws.

10. Lobby Activities and Reporting

The Texas ethics law and rules adopted by the Texas Ethics Commission require the Consultant to report compensation or reimbursement paid to Consultant for the purpose of directly communicating with members of the legislative or executive branch. Texas Ethics Commission Rules provide that a registrant receiving compensation or reimbursement for purposes other than lobby activities may reasonably determine the amount of compensation attributable to lobby activities and report only that amount. The rules define "*lobby activity*" as "Direct communication with one or more members of Texas legislative or executive branch to influence legislation or administrative action and activities in preparing for such direct communication." The statutory term *"lobby activity"* does not include, for example, the following activities performed on the Client's behalf:

- Any effort to influence purchasing decisions by a state agency
- Daily monitoring of legislation and/or executive actions
- Communication with the Client on many strategic subjects
- Preparation and delivery of status reports, newsletters, and other items of interest
- Giving sworn testimony before executive or legislative bodies
- Legal consultation, briefings and documentation
- Analysis of political races and fundraising efforts on behalf of PACs and/or individual candidates
- Attending and preparing for board meetings
- Negotiation sessions
- Arranging meetings with various state officials to brief them on areas of interest to the Client
- Any other action taken which is not designed specifically to influence legislative or executive action.

a. The Consultant will allocate on a reasonable basis, as allowed by the rules, the amount of the retainer paid to the Consultant that is being paid for *"lobby activities"*.

11. 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 contract and as required by law.

12. Conflicts of Interest

Consultant agrees to fully comply with the Texas Ethics laws concerning legislative

advocacy conflicts of interests, including but not limited to, Chapter 305 of the Texas Government Code. Consultant agrees to exercise extreme care and to undertake preemptive measures to avoid conflicts, unintended and otherwise, which may arise in the future. If any such conflict should develop, Consultant agrees to bring that fact immediately to the attention of both Clients for resolution. Consultant agrees that their clients shall be the sole judge of whether or not a conflict exists and whether any such conflict has been adequately resolved.

In addition to the required filings with the Texas Ethics Commission, the Consultant agrees to provide the Client with a complete list of all newly acquired legislative consulting clients on a monthly basis. By signing this Agreement, the Client is affirming that they have received a complete listing of the Consultant's legislative consulting clients and that as of the execution date of this Agreement no direct conflicts of interests currently exist. Additionally, the Consultant agrees to notify the Client of any legislative work it is involved with on behalf of other clients which may pose a conflict of interest or be in opposition to the Client's agenda or interests. During the regular legislative sessions, notification shall be on a weekly basis. During the interim, notification shall be on a monthly basis.

13. Termination

It is agreed and fully understood that Client may, at its option and without prejudice to any other remedy it may be entitled to at law or in equity, cancel or terminate this Agreement upon thirty (30) days written notice to Consultant. Consultant shall be compensated in accordance with the terms of this contract for all services performed up to the date of termination. Client shall not be obligated to pay for any work which is unsatisfactory or not submitted in compliance with the terms of this Agreement. Consultant shall deliver all original source documents belonging to Client immediately after notice of termination of this Agreement has been received by Consultant. The Client may also terminate this contract with fifteen (15) days notice if termination is caused due to a conflict of interest that cannot be resolved to the Client's satisfaction.

It is agreed and fully understood that the Consultant may, at its option and without prejudice to any other remedy it may be entitled to at law or in equity, cancel or terminate this Agreement upon thirty (30) days written notice to Client.

14. Applicable Law

This contract is entered into subject to the Charter and ordinances of Client, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Consultant will timely make any and all reports required per federal, state or local law, including but not limited to registration and reporting of lobbying activities, as necessary, and proper reporting to the Internal Revenue Service, as required. Situs of this Agreement is agreed to be Tarrant County, Texas, for all purposes including performance and execution.

15. Severability

If any of the terms, provisions, covenants or conditions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions contained in this Agreement, and all other provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and any other provisions of the Agreement shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

16. Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

17. Successors and Assigns

Client and Consultant each bind themselves, their successors, executors, administrators and assigns to the other party to this Agreement. Neither Client nor Consultant will assign, sublet or transfer their interest in this Agreement without the written consent of the other. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of Client.

18. Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

19. Changes

Client may, from time to time, require changes in the scope of the services to be performed under this Agreement. Such changes as are mutually agreed upon by and between Client and Consultant may be incorporated by written modification to this Agreement.

20. Performance of Work

Consultant's associates and employees shall perform all the work called for in this Agreement. Consultant covenants and agrees that all of his associates and employees who work on this project shall be fully qualified to undertake same and competent to do the work described in this Agreement.

21. Local Businesses

In performing this Agreement, Consultant agrees to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to Client projects and procurements, Client also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons in organizations proposed for work on this Agreement, Consultant agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Agreement.

22. Insurance Requirements

A. Consultant shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. Consultant shall not commence work under this Contract until Consultant has obtained all the insurance required under this Contract and such insurance has been approved by Client, nor shall Consultant allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis, except for professional liability, which shall be on a "claims made" basis. The insurance requirements shall remain in effect throughout the term of this Contract.

1. Worker's Compensation Insurance, statutory limits as required by law; Employers Liability Insurance of not less than $1,000,000.00 for each accident, $1,000,000.00 disease-each employee, $1,000,000.00 disease-policy limit.

2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering but not limited to the indemnification provisions of this Contract, fully insuring Consultant's liability for injury to or death of employees of Client and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage limit of $1,000,000.00 per occurrence and $2,000,000 aggregate.

3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of $1,000,000.00 per occurrence; or separate limits of $250,000 for bodily injury (per person), $500,000 bodily injury (per accident), and $100,000 for property damage.

4. Professional Liability Insurance: Consultant shall obtain and maintain at all

times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be $1,000,000.00 per occurrence and $2,000,000 aggregate. Any such policy of insurance and the Declarations Page therefore shall identify if coverage is being provided on an "occurrence" or "claims-made" basis. If this coverage is being provided on a claims-made basis, Consultant must maintain this policy for a period of two (2) years after the completion of the project or shall purchase the extended reporting period or "tail" coverage insurance providing equivalent coverage for the same period of time.

B. Each insurance policy to be furnished by Consultant shall include the following conditions by endorsement to the policy:

1. Name Client as an additional insured as to all applicable coverage, except worker's compensation and professional liability insurance;

2. Each policy will require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Client by certified mail to:

   Risk Manager
   City of Arlington MS# 63-0790
   P.O. Box 90231
   Arlington, Texas 76004-3231

   However, if the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to Client is required; Consultant shall also notify Client within twenty-four (24) hours after receipt of any notices of expiration, cancellation, nonrenewal or any material change in coverage it receives from its insurer(s).

3. The term "Owner" or "Client" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of Client and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of Client;

4. The policy phrase "Other Insurance" shall not apply to Client where Client is an additional insured on the policy; and

5. All provisions of the Contract concerning liability, duty, and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by Consultant, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Consultant. Client's decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. The General and Automobile liability policies required herein shall be written with an "occurrence" basis coverage trigger.

D. Consultant agrees to the following:

1. Consultant hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against Client, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and Consultant shall have no recourse against Client for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of Consultant;

3. Approval, disapproval or failure to act by Client regarding any insurance supplied by Consultant (or any subcontractors) shall not relieve Consultant of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate Consultant from liability; and,

4. No special payments shall be made for any insurance that the Consultant and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

23. Venue

The parties to this Agreement agree and covenant that this agreement will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Tarrant County, Texas.

24. Israel Provision

Pursuant to Chapter 2270 of the Texas Government Code, the VENDOR verifies by signing this Contract that the Vendor does not boycott Israel and will not boycott Israel during the term of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers, as of the date set forth above.

MCGUIREWOODS CONSULTING

BY: Kwame Walker

SENIOR VICE PRESIDENT

CITY OF ARLINGTON, TEXAS

BY: _____

Jay Warren
Director of Communication and
Legislative Affairs

ATTEST:

_____

Alexander Busken, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY: Eddie Martin