

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Mayor and Council

AGENDA DATE: January 29, 2008

CONTACT PERSON/PHONE: Sylvia Borunda Firth, Mayor's Chief of Staff-541-4656

DISTRICT(S) AFFECTED: All

SUBJECT:

AUTHORIZE the City Manager to sign a Professional Services Agreement by and between the City of El Paso and Patricia Shipton for legislative and lobbying services in Austin, Texas. The term of the Agreement is for the period of January 29, 2008 through January 28, 2009 with two (2) consecutive renewal terms of one (1) year each. Compensation for each year will not exceed \$100,000.00.

BACKGROUND / DISCUSSION:

Ms. Shipton has performed legislative and lobbying services in Austin, Texas for the City of El Paso since November 2004.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? If so, when?

No

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?

This item has been budgeted through the City Attorney's office.

Account 502215-Fund 15466-Class 03000/03006

No Budget transfer required

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

OTHER: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a Professional Services Agreement by and between the City of El Paso and Patricia A. Shipton for legislative and lobbying services in Austin, Texas. The term of the Agreement is for the period of January 29, 2008 through January 28, 2009, with two (2) consecutive renewal terms of one (1) year each. Compensation for each year will not exceed \$100,000.00.

ADOPTED this the 29TH day of January 2008.

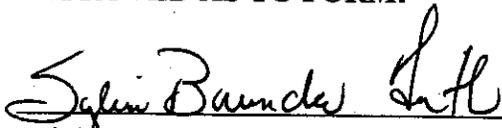
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:


Sylvia Borunda Firth
Senior Assistant City Attorney

STATE OF TEXAS)
)
COUNTY OF EL PASO)

PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract ("Contract") is entered into by and between the **CITY OF EL PASO**, a home rule municipal corporation ("City") and **PATRICIA A. SHIPTON** ("Contractor").

WHEREAS, the City has a need to engage the services of the Contractor for legislative lobbying in Austin, Texas; and

WHEREAS, Contractor is knowledgeable and capable of rendering said services to the City.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **SCOPE OF SERVICES.** The Contractor shall perform the services as stated in Attachment "A" (Scope of Services) attached hereto and made a part hereof for all purposes, under the terms and conditions hereinafter stated, and the Contractor hereby accepts and agrees to perform such services. Each of the parties agrees that in the event the scope of the services to be performed by Contractor is expanded during the term of this Agreement, the compensation of Contractor shall be adjusted by mutual consent. Contractor agrees that:
 - A. She shall register as a lobbyist representing the interest of the City with any agency requiring such registration and shall pay the cost of such registration.
 - B. She shall not give, furnish or contribute monies, materials, supplies or make loans to or in support of any candidate or to any political committee, through or in the name of City directly or indirectly.
 - C. She shall have sole responsibility for the payment of all federal, state, local and other income taxes and for all employment and other taxes applicable to the consideration paid to her.
 - D. She does do not have authority or power to contract or bind City in any manner.
 - E. She warrants that to her knowledge or belief, none of the work she is performing for other clients' conflicts with the interest of City. As part of this Agreement, the Contractor expressly agrees to disclose to the City any existing or potential conflicts of interest related to any of the Services. Should a conflict arise during the course of this representation, Contractor shall immediately contact the City Attorney's Office to discuss and resolve the conflict. Further, she shall promptly notify City in writing of any conflict of interest that comes to her attention and City shall have the right to terminate this Agreement with written notice to Contractor at

least thirty (30) days in advance of such termination. It is agreed by City and Contractor that the following exclusions shall apply to this Agreement:

- 1) Contractor shall not represent any other parties which involve direct competition with City, without the prior written consent of the City.
 - 2) Contractor shall not directly participate in the political campaign of any candidate for Mayor, City Council or work on behalf of or in opposition to local referendums.
2. **TERM.** Regardless of the date of execution, the Agreement will be in effect for a "Term" period from and including, January 29, 2008 through and including January 28, 2009 ("Expiration Date") with two (2) consecutive separate renewal terms of one (1) year each, at the City's option. No such renewal shall be effective without the prior consent of the El Paso City Council.
3. **COMPENSATION AND METHOD OF PAYMENT.** The fee for the above-described services shall be \$8,000.00 (EIGHT THOUSAND AND NO/100 DOLLARS) per month, and shall be paid by the City to Consultant in monthly installments. The above stated fee is inclusive of expenses incurred by the Consultant in the course of its representation of the City except any reasonable travel expenses to El Paso, as may be determined by the City as necessary. Reimbursable expenses do not include entertainment expenses. No extraordinary expense will be incurred without the prior authorization of City. The City agrees to pay the Consultant within 30 days of receipt of an itemized statement on the Consultant's letterhead for actual services rendered or expenses incurred under this Agreement. Under no circumstances shall the City be obligated under this Agreement to pay the Consultant any fees or expenses in excess of a total of \$100,000.
4. **LOCATION OF PERFORMANCE.** The places where such services are to be performed is the Cities of El Paso and Austin, State of Texas or in such places as may be necessary in the performance of this agreement.
5. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Nothing herein shall be construed as creating a relationship of employer and employee between the Parties. The City shall not be subject to any obligations or liabilities of the Contractor incurred in the performance of this contract unless otherwise herein authorized. The Contractor expressly agrees to indemnify and hold harmless the City for any and all liabilities and obligations incurred due to any breach of contract or negligent acts or omissions or other defalcations on the part of the Contractor.
6. **LAW GOVERNING CONTRACT.** For purposes of determining the place of the contract and the law governing the same, it is agreed that the contract 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.

7. **TERMINATION.** Either party may terminate the Agreement at any time, upon 30 days written Notice to the other party in accordance herewith. In the event the City terminates this Agreement, Contractor shall be entitled to compensation for services performed prior to the termination. In the event Contractor violates any of the terms of this Agreement the City may terminate the Agreement without notice. The Parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.
8. **INSURANCE.** At all times during the performance of this Agreement, the Contractor shall maintain in effect professional liability insurance of the type and in the amounts maintained by prudent professionals engaged in rendering services of the type contemplated by this Agreement.
9. **INDEMNIFICATION.** The Contractor expressly agrees to indemnify and hold harmless the City for any and all liabilities, damages, suits, causes of action, judgments and obligations resulting directly or indirectly from any negligence, gross negligence, intentional act, malpractice or willful misconduct on the part of the Contractor, its employees, subcontractors, agents or representatives in the rendering of legal services under this Agreement.
10. **GOVERNMENTAL FUNCTION.** Contractor expressly agrees that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Contractor further expressly agrees that every act or omission of the City which, in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.
11. **CITY NOT OBLIGATED TO THIRD PARTIES.** The City shall not be obligated or liable hereunder to any person other than the Contractor.
12. **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 section cannot be waived.
13. **COMPLETE AGREEMENT.** This Agreement contains the complete agreement between the Parties concerning the Services.
14. **CHOICE OF LAW.** It is the intention of the Parties that this Agreement be construed in accordance with and under the laws of the State of Texas.

15. **NOTICE.** Any notices required under this contract shall be sufficient if sent by Certified Mail, Return Receipt Requested to the City at the following address:

CITY: Mayor, City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

CONTRACTOR: Patricia A. Shipton
Government Affairs Consultant
919 Congress Avenue, Suite 1030
Austin, Texas 78701

APPROVED THIS 29th DAY OF JANUARY 2008.

CITY OF EL PASO

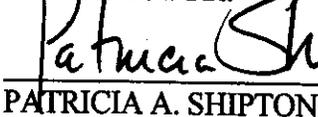
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Sylvia Borunda Firth
Senior Assistant City Attorney
Director of Governmental Affairs

CONTRACTOR:



PATRICIA A. SHIPTON

ATTACHMENT "A"
SCOPE OF SERVICES

1. Provide the City with timely information on Texas legislative and executive issues of potential concern to the City.
2. During the Regular Legislative sessions and any special legislative sessions that may occur during the duration of this contract, Provide the City with weekly reports regarding legislative and executive issues of concern to the City. Such reports to include an analysis of the issue in terms of the potential impact on the City, an overview of the policymaking contacts governing the priority issue, and any anticipated time tables, and parties which have positions conflicting with those of the City. During non-session periods, such reports shall be submitted monthly. The reports will also recommend appropriate action for the City, all such reports are to be delivered to the City Attorney.
3. Maintain contact with the Mayor's Office and the City Attorney's Office or both as often as may be necessary to effectively represent the City.
4. Provide counsel and planning regarding legislation of interest to City.
5. Develop strategies and undertake activities to gain political support for City legislative initiatives.
6. Personally be involved in direct contact with key constituents, including legislators, legislative committees, and others.
7. Perform such other duties as may be requested from time to time by the Mayor, the City Attorney or other City Council members. The Mayor's Office shall be kept informed of all such requests.

CITY CLERK DEPT.
08 JAN 23 PM 3:35