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 Murray, Montgomery and O'Donnell for outside counsel in connection with the City of El Paso's federal legislative program. The contract term will be from February 12, 2010 through and including August 31, 2011 with three (3) options to renew for an additional one (1) year each. Compensation for each year shall not exceed $118,200.00.

ADOPTED this _____ day of _____, 2010.

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

Document Name:K-10-PSA-Murray Montgomery & O'Donnell
Document #: 55140
Author_Id: SFIR

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

This Professional Services Agreement ("Agreement") is entered into the date written on the signature page ("Effective Date") between the following Parties:

CITY The City of El Paso, Texas,
A Texas Municipal Corporation

FIRM Murray, Montgomery & O'Donnell
A Washington, D.C. Professional Corporation

RECITALS

The City has determined that it requires the assistance of outside counsel in connection with the City of El Paso's federal legislative program in Washington, D.C.

The Firm has significant experience and expertise in such matters, and is qualified to provide the consulting and lobbying services required by the City.

FOR THESE REASONS, AND IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

ARTICLE ONE
Contractual Relationship

1.1 The City agrees to engage the Firm and the Firm hereby agrees to perform professional services as required under this Agreement.

1.2 The Parties are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the Parties or any of their officers, employees, agents or contractors.

1.3 The Firm, its officers, employees, agents and contractors shall not receive any compensation or benefits from the City, other than as expressly set forth in this Agreement.

1.4 The Firm does not have, and will not attempt to assert, the authority to make commitments for or to bind the City to any obligation.

ARTICLE TWO
Scope of Services

2.1 The Firm will provide federal consulting and lobbying services on behalf of the City of El Paso as requested by the City.

2.2 All aspects of the Firm's representation of the City shall be coordinated with the Office of the City Attorney. Copies of all documents, whether in draft or final form, legal memoranda, and correspondence shall be provided to the Office of the City Attorney with copy to the City Manager.

2.3 In connection with the Services more fully described on Schedule A ("Scope of Services"), the Firm shall provide, as directed by the City Attorney or his or her designee, advice, counsel, negotiation assistance and document preparation services.

ARTICLE THREE
Term and Termination

3.1 ***Term.*** Regardless of the date of execution, the Agreement will be in effect for a "Term" period from and including the Effective Date through and including August 31, 2011 ("Expiration Date"), unless sooner terminated in accordance with this Article Three.

3.2 ***Option to Extend.*** The City of El Paso shall have the option to extend this agreement for three (3) additional terms of one (1) year each on the same terms and conditions slated herein. The option may be exercised by the City Manager by providing written notice to the Firm.

3.3 ***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, the Firm shall be entitled to compensation for services performed prior to the termination. In the event the Firm violates any of the terms of this Agreement the City may terminate the Agreement without notice.

3.4 ***Termination by Mutual Consent.*** The Parties may terminate the Agreement by mutual consent upon such terms as they may agree in writing.

3.5 ***Time of Performance***. The Services shall be undertaken and completed as appropriate to carry out the purposes of this Agreement.

ARTICLE FOUR
Fees and Expenses

4.1 ***Fees.*** The fee for the above-described services shall be $9,600.00 (NINE THOUSAND SIX HUNDRED AND NO/100 DOLLARS) per month, not to exceed $115,200.00 annually, and shall be paid by the City to Consultant in monthly installments.

4.2 ***Expenses.*** The above stated fee is inclusive of expenses incurred by the Firm in the course of its representation of the City of El Paso except any reasonable travel expenses to El Paso, as may be determined by the City as necessary.

4.3 ***Payment.*** The City agrees to pay the Firm within 30 days of receipt of an itemized statement on Firm letterhead for actual services rendered or expenses incurred under this Agreement.

4.4 ***Maximum Fees and Expenses.*** Under no circumstances shall the City be obligated under this Agreement to pay the Firm any fees or expenses in excess of a total of $118,200.00.

ARTICLE FIVE
Conflicts of Interest; Ethics

5.1 ***Conflicts of Interest.*** As part of this Agreement, the Firm 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, the Firm shall immediately contact the City Attorney's Office to discuss and resolve the conflict. It is agreed by City and Consultant that the following exclusions shall apply to this Agreement:

a. Consultant shall not represent any other parties in federal matters which involve direct competition with City, without the prior written consent of the City.

b. Consultant 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.

5.2 ***Ethics.*** The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against any attorney providing services under this Agreement.

ARTICLE SIX
Insurance and Indemnification

6.1 ***Insurance.*** At all times during the performance of this Agreement, the Firm 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.

6.2 ***INDEMNIFICATION.*** **The Firm 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 Firm, its employees, subcontractors, agents or representatives in the rendering of legal services under this Agreement.**

ARTICLE SEVEN
General Administrative Provisions

7.1 ***Governmental Function.*** The Firm 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. The Firm 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.

7.2 ***City Not Obligated to Third Parties.*** The City shall not be obligated or liable hereunder to any person other than the Firm.

7.3 ***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 7.3 cannot be waived.

7.4 ***Complete Agreement.*** This Agreement contains the complete agreement between the Parties concerning the Services.

7.5 ***Severability.*** All agreements and covenants contained herein are severable, and in the event any of them, with the exception of those contained in Articles One, Two, Four, and Six, shall be held to be invalid by any competent court, this contract shall be interpreted as though such invalid agreements or covenants were not contained therein.

7.6 ***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.

7.7 ***Place of Performance.*** The place where such services are to be performed is in the City of Washington, D.C., City and County of El Paso, State of Texas, or in such cities, states or nations as the City may require or permit. Venue shall be in El Paso County.

7.8 ***Notices.*** All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and be deemed to have been duly given among the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

CITY:	Charles F. McNabb City Attorney #2 Civic Center Plaza El Paso, Texas 79901-1196
With copy to:	Joyce A. Wilson City Manager 2 Civic Center Plaza El Paso, Texas 79901-1196
FIRM:	Murray, Montgomery & O'Donnell 101 Constitution Avenue, NW, Suite 900 Washington, D.C. 20001

APPROVED this ____ day of _____ 2010.

CITY OF EL PASO

_____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Senior Assistant City Attorney

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

MURRAY, MONTGOMERY & O'DONNELL

By: _____
John Montgomery
Partner

By: _____
John O'Donnell
Partner

SCHEDULE A

SCOPE OF SERVICES

Consultant shall assist in the formulation and adoption by City Council of the City's Federal Initiatives Program ("Program") and confer with the Mayor and his designee and such other City personnel as determined by the Mayor, at the times and places mutually agreed to by the parties on all organizational planning and activities which have a bearing on the Program. Consultant shall be available for regular meetings with the Mayor and City personnel to assist in establishing legislative and regulatory priorities.

The consultant shall work with the Mayor and Council, as well as the City's Intergovernmental Relations staff, on the identification and prioritization of issues. The duties associated with this service shall include, but are not limited to the following:

A. Provide expert advice on the federal legislative and governmental processes as they relate to legislation or other matters affecting the City.

B. Present the City's position on legislative matters to federal elected officials and to other persons as necessary to achieve the City's desired objectives.

C. Assist in the development of testimony, expert and other, required for effective presentation of the position of the City on legislation affecting the City.

D. Consultant shall submit monthly written reports to the Mayor, City Council and City manager prior to, but no later than the time of Consultant's submission of a monthly invoice, so as to allow the City Council to make informed decisions relative to legislative matters. The report will be specific to the work by consultant on behalf of the City and detail progress in securing City initiatives, meetings consultant participated in, etc.

E. Continuously monitor legislative activity to identify developments, which affect the interests of the City in matters of local concern and advise the Mayor and City Council and City Manager, providing his or her expert assessment of the action that should be initiated by the City in each such case.

F. Determine the action to be taken by the Consultant to achieve the City's desired objectives with respect to each assigned task. Specific activities will include but not be limited to:

1) Identify programs and funding sources that are available or are potentially available to either the City of El Paso government or other public institutions in El Paso to advance the priorities and initiatives specified by City council in the Program.

2) Assist the City with grant applications for Federal programs and work with Federal officials in Washington D.C. to expedite these applications.

3) Review the Federal Register, Commerce Clearing House Reports, Congressional Quarterly, National Journal and other publications to obtain information on new resources and changing Federal policies.

4) Attend annual conferences of the National League of Cities and U.S. Conference of Mayors and represent the City on various task forces at the Mayor's request.

5) Come to El Paso periodically at the request of the Mayor to meet with City Council members, the City Manager, and City staff on federal issues and concerns. Visits should occur at least quarterly.

6) Participate in regular telephone conferences with City staff and the Intergovernmental Affairs Legislative Review Committee to provide updates regarding the Program.

7) Assist in the passage of legislative and regulatory initiatives specified by the City Council as part of the Program and assist in monitoring and tracking city-related legislation.

8) Effectively communicate City Council policy positions to the Texas Congressional Delegation and other members of Congress.

9) Informing members of Congress, including but not limited to the Texas Congressional Delegation, of proposed or pending legislation the City opposes due to negative or adverse impact on City's interests.

10) Prepare testimony and assisting with the preparation and scheduling of witnesses before legislative committees.

11) Assisting in the coordination of the City's Program with the National League of Cities, U.S. Conference of Mayors, and other groups and cities.

12) Assist in affecting regulatory development of City's interests.

13) Schedule meetings for appropriate City personnel with federal elected officials and agency representatives, as requested by the Mayor or his designee.

Consultant shall maintain a Washington office, which will be available for performance of its duties under this Agreement. Members of Consultant's firm shall be available to work on behalf of the City, as necessary. Consultants' Washington office and support staff will be available for all reasonable use by officials of the City, when in Washington.

Consultant shall confer with the Mayor and his designee and such other City personnel as determined by the Mayor, at the times and places mutually agreed to by the parties on all organizational planning and activities which have a bearing on the City's Federal Initiatives Program. Consultant shall be available for regular meetings with the Mayor and City personnel to assist in establishing legislative and regulatory priorities.

Consultant shall review federal executive proposals, pending or contemplated legislation, proposed and adopted administrative rules and regulations and other Washington developments for the purpose of advising the City of those items which may have a bearing on the City's Program.

More specifically, Consultant shall advise and consult on behalf of the City with the Executive and Legislative branches of the Federal government and with any Federal agencies, departments and commissions as may be necessary for the performance of its obligation. However, Consultant will not be required to act as legal counsel or otherwise represent the City in any administrative or legal proceeding, except as agreed upon by the City Attorney and approved by City Council.

Consultant shall counsel with the Mayor, or his designee, and the Intergovernmental Affairs Staff of the City Attorney's Office regarding appearances by members of the City Council or City personnel before legislative committees and administrative agencies and will arrange for appointments as necessary. At the request of the Mayor or his designee, Consultant shall also schedule and attend meetings between members of the legislative and executive branches of the Federal government and City officials.

Upon City's request, Consultant shall contact Federal agencies on City's behalf when City grant applications are under consideration by such agencies and consult with-the appropriate City Department representative, in coordination with the Mayor or his designee regarding initiatives which should be undertaken to obtain the most favorable consideration of such applications.

In fulfilling its responsibilities under this Agreement, Consultant shall act in the name of the City of El Paso, Texas under the supervision of the Intergovernmental Affairs Staff of the City Attorney's office. Any changes in the principal assigned by the Consultant to carry out the obligations under this Agreement as of the effective date of this Agreement must be approved in writing by the Mayor or his designee.

Consultant will be responsible for compliance with all laws and regulations applicable to entities that engage in lobbying activities including but not limited to the Lobbying Disclosure Act.