

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Eric Strong, City Manager
Date: November 1st, 2016
Subject: Consulting Services

Council Action Requested:

Consideration of contract for Consulting Services with Jerry Valdez for the 2017 Texas Legislative Session.

Background Information:

Staff is requesting that the council approve an agreement for professional services with Mr. Jerry Valdez for the purpose of assisting Richland Hills and monitoring the legislative session for any legislation that might have an effect on the city. The City hired Mr. Valdez in the previous legislative session and he proved to be very effective and worthwhile in assisting with legislation and monitoring the status of city related bills.

Board/Citizen Input: N/A

Financial Impact: \$5,000 per month for the duration of the contract.

Staff Contacts:

Eric Strong
City Manager
estrong@richlandhills.com

Attachments: Agreement

CITY OF RICHLAND HILLS CONSULTANT AGREEMENT

This agreement (Agreement) is made by and between the City of Richland Hills (City) and **JERRY VALDEZ** (Consultant) to provide professional services during the term of the 2017 Regular Session of Texas Legislature and any Special Sessions of the Texas Legislature called during 2017. City and Consultant agree:

1. **CONDITIONS OF AGREEMENT.** City agrees to retain Consultant, and Consultant agrees to perform professional services as set forth in Exhibit A attached hereto and incorporated herein for all purposes, subject to any modifications set forth herein. To the extent said exhibit conflicts with the terms set forth in this Agreement, this Agreement controls.
 - a. Scope of Work. Consultant agrees to provide the services, including all equipment and labor as necessary, as identified in Exhibit A. Consultant shall comply with all applicable local, state and federal laws, rules and regulations in performing the services described in this Agreement.
 - b. Registration. Consultant shall register with the Texas Ethics Commission and maintain Consultant's status as a lobbyist in good standing for the terms of this Agreement, representing the interest of the City.
 - c. Conflicts of Interest. During the time Consultant is performing services hereunder, Consultant shall not, without the prior written consent of the City, enter the employ of or otherwise agree to perform the same or similar services for any person, firm, entity or corporation which could conflict with the interests of the City without the prior written approval from the City.

2. **COMPENSATION.** City shall compensate Consultant for the services identified in the scope of work in Exhibit A by payment of the following fees:
 - a. A flat fee of Five Thousand Dollars per month (\$5000.00), with the first payment payable within seven days of execution of this Agreement.
 - b. Consultant must maintain a log of actual billable hours worked and enumerate the tasks performed during that time. This time log must be submitted to the City on a monthly basis.
 - c. No request for additional fees shall be made by Consultant based upon hours expended on any performance that is within the scope of work outlined on Exhibit A.
 - d. No payment, of any nature whatsoever, will be made to Consultant for additional work or services without City's written approval before such work begins.

3. **ASSISTANTS TO CONSULTANT.** It is understood and agreed that retention of Consultant by City for the purposes stated in this Agreement is exclusive, but Consultant has the right to employ assistants or sub-consultants it deems proper in the performance of the work, subject to the approval of City. Any services of any assistants shall be paid by Consultant.
4. **INDEMNITY. CONSULTANT does hereby covenant and agree to release, indemnify and hold harmless CITY and its officials, officers, agents, representatives, employees, and invitees from and against any and all liability, claims, suits, demands and/or causes of action, (including, but not limited to, attorney's fees and cost of litigation), which may arise by reason of death or injury to property or persons but only to the extent occasioned by any error, omission or negligent or intentional act of CONSULTANT, its officials, officers, agents, employees, invitees or other persons for whom CONSULTANT is legally liable with regard to the performance of this Agreement, and CONSULTANT will, at its own cost and expense, defend and protect CITY against any and all such claims and demands.**
5. **ASSIGNMENT AND DELEGATION.** Neither City nor Consultant may assign their rights or delegate their duties without the written consent of the other party.
6. **AUDITS AND RECORDS.** During normal business hours and as City may deem reasonably necessary, Consultant shall make available to City for examination, all of its records with respect to all matters covered by the Agreement and will permit City to audit, examine and make copies, excerpts, or transcripts from such records. City may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Agreement.
7. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement upon written notice to the other party at least ten (10) days prior to the date of termination. Upon receipt of such notice, Consultant shall immediately discontinue all services and work in connection with the performance of this Agreement.

Consultant shall be compensated for services performed and expenses incurred for satisfactory work up to the termination date. In the event of termination, Consultant shall refund a pro-rata amount of the fees paid which exceed the percentage of work actually completed up to the termination date.

8. **OWNERSHIP OF DOCUMENTS.** All documents, data, studies, surveys, reports, photographs and other work product prepared by Consultant under this Agreement are owned by the City. Upon termination of this Agreement or completion of the 2017 Regular and any Special Sessions of the Texas Legislature, Consultant shall deliver to City all data, studies, surveys, reports, photographs and other work product to the City.

9. **CONSULTANT'S REPRESENTATIONS.** Consultant hereby represents, promises and warrants to City that Consultant is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder.

By signature of this Agreement, Consultant warrants to City that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest.

10. **PERFORMANCE BY CONSULTANT.** All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the profession in the State of Texas applicable to such services on the type contemplated by this Agreement, and Consultant shall be responsible for all services provided hereunder whether such services are provided directly by Consultant or by any assistants hired by Consultant. Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay and will give the City such priority as is necessary to cause Consultant's services hereunder to be timely and properly performed.
11. **OBJECTION TO PERSONNEL.** If at any time after entering into this Agreement, City has any reasonable objection to any of Consultant's personnel assigned to the Project, Consultant shall promptly propose substitutes to whom City has no reasonable objection, and Consultant's compensation shall be equitably adjusted to reflect any difference in Consultant's costs occasioned by such substitution.
12. **ENTIRE AGREEMENT.** This instrument contains the entire agreement between City and Consultant concerning the Project.
13. **NOTICES.** Any notice or communication required or permitted hereunder shall be deemed to be delivered and received upon the earlier of when actually received by the intended recipient or, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested, addressed to the intended recipient at the address shown below or by confirmed facsimile:

City: Eric Strong
City Manager
City of Richland Hills
3200 Diana Drive
Richland Hills, Texas 76118
Fax: (817) 626-3808

Consultant: _____

14. **AMENDMENTS TO AGREEMENT.** City and Consultant may amend this Agreement only in writing.
15. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in the Agreement shall be for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included.
16. **GOVERNING LAW AND VENUE.** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for any action arising out of this Agreement shall lie in Tarrant County, Texas. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the other party all of its reasonable attorneys' fees and costs, including expert costs, incurred in connection with such dispute.
17. **COUNTERPARTS.** The Agreement may be signed in counterparts, each of which shall be deemed to be an original.
18. **EFFECTIVE DATE.** This Agreement shall be effective on the latter date of signing by City or Consultant.
19. **EQUAL EMPLOYMENT OPPORTUNITY.** Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
20. **WAIVER.** Notwithstanding any provision to the contrary, City does not waive any rights or obligations it may have, either at common law or by statute, through this Agreement or any other agreement with Consultant. In no event shall the waiver or non-enforcement of any default or breach of this Agreement, or the making by City of any payment to Consultant, constitute or be construed as a waiver by City of any breach of covenant, or any default which may exist on the part of Consultant.
21. **INDEPENDENT CONTRACTOR.** Consultant shall perform services hereunder as an independent contractor, and not as an officer, agent, servant or employee of City and Consultant shall have the exclusive right to control services performed hereunder by Consultant, and all persons performing same, and shall be responsible for the negligent acts and omissions of its officers, agents,

employees and sub-consultants. Nothing herein shall be construed as creating a partnership or joint venture between City and Consultant, its officers, agents, employees and sub-consultants; and the doctrine of respondeat superior has no application as between City and Consultant. Each party agrees that it has no authority hereunder to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other party.

AGREED TO BY:

CONSULTANT

By: _____
Name: _____
Title: _____

Date signed: _____

CITY OF RICHLAND HILLS

By: _____
Name: Eric Strong
Title: City Manager

Date signed: _____

EXHIBIT A

SCOPE OF SERVICES

1. Monitor status of legislation of interest to City during any 2017 Regular or Special Session of the Texas Legislature, particularly legislation relative to the creation, dissolution, funding, and authority of Public Transportation Authorities;
2. Provide City with timely reports as City deems necessary on the status of the political environment and trends, which written reports shall include at least weekly status of related pending legislation, the schedule for hearings and votes on such legislation, and to advise client in organizing testimony and witnesses to appear at any such hearings;
3. Participate in periodic telephone conference calls with City staff to discuss specific developments from the Legislature's work during the term of this Agreement and to assist City in formulation of legislative policy and positions on legislation as may be needed;
4. Seek the position of City with respect to legislation and following development and implementation of City's position, communicate City's position to the members of the legislative and executive branches of Texas government.