

**Professional Services Agreement  
for Contract Legal Counsel (FY 2015-2016)**

This Professional Services Agreement (“Agreement”) for Outside Legal Counsel is entered into by and between the City of Corpus Christi, a Home-Rule Municipality (“Client”), and **Julian Grant, Attorney-at-Law**, (“Counsel”) effective for all purposes upon execution by the City Manager or City Manager’s designee.

**Section 1: Licensure**

Counsel warrants and agrees that Counsel is licensed to practice law in the State of Texas without limitation. Counsel must maintain Counsel’s license to practice law in good standing throughout the term of this Agreement. If Counsel is no longer be authorized to practice law in the State of Texas, this contract will terminate immediately.

**Section 2: Effective Date, Term, Termination**

- a. The term of this agreement is from **October 1, 2015** through **September 30, 2016 (FY 2015-2016)** unless sooner terminated.
- b. Either party may terminate this agreement by giving at least 10 days' written notice to the other of its intent to terminate this agreement. Such termination may be made with or without cause. During the 10-day period after such notice is sent, the parties shall continue to act toward each other in good faith. In such event of termination without cause, Client will be invoiced for the actual time and charges accumulated through the date of termination.
- c. Counsel’s primary Client contact will be with **Lisa Aguilar**, known hereinafter as the “primary Client contact”. The City Attorney may redesignate this primary Client contact at any time. Only the primary Client contact or the City Attorney may assign duties to Counsel unless otherwise directed by the City Attorney.

**Section 3: Services to be Performed**

Client desires Counsel to perform and Counsel agrees to perform, the following duties: **Development Services (general advice, attend meetings of Planning Commission, attend meetings of Zoning Board of Adjustment), Sales Tax advice as requested, Economic Development (advice & selected meetings of Type A Board), selected ABC Center matters, selected Downtown matters, selected Construction matters, selected CVB matters, selected intergovernmental relations matters, selected financing & bond matters, other legal matters as requested by Client contact.**

All duties assigned to Counsel shall be appropriate to and consistent with the professional role and responsibility of Counsel.

**Section 4: Fee for Services**

- a. Total cost for all services provided by Counsel and all expenses incurred by Counsel under this Agreement shall not exceed **\$75,000** unless expressly authorized by written amendment to this Agreement.
- b. Client will pay Counsel a fee for the Services on the following terms: **\$50.00 per hour**.

c. Counsel shall submit detailed invoices for all services rendered on a weekly basis. All services invoiced to the Client by Counsel are subject to final approval by the City Attorney prior to payment. Payments due to Counsel by the Client are payable within 30 days upon receipt of an acceptable invoice.

### **Section 5: Hours of Work**

This contract does not guarantee any specific amount of hours of work. Hours will be as necessary to provide for completion of the task. For budgeting purposes, Counsel shall not generally provide more than 30 hours of work per week to Client. If Counsel exceeds 30 hours of work in any work week, then Counsel will reduce the hours in the following three weeks by the number of hours in which the 30-hour limit was exceeded in a manner that ensures that no more than 120 hours are worked in any four-week period. This hourly limit may be waived for any week by written authorization of the City Attorney.

### **Section 6: Appropriation of Funds**

All parties recognize that the continuation of any contract after the close of any fiscal year of Client, which fiscal year ends on September 30<sup>th</sup> of each year, shall be subject to appropriations and budget approval providing for covering such contract item as an expenditure in said budget. Client does not represent that the budget item will be actually adopted, said determination being within the sole discretion of the City Council at the time of adoption of such budget.

### **Section 7: Independent Contractor**

Counsel shall perform all professional services as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall an agent, servant, or employee of Counsel be considered an employee of the Client. If Counsel believes, at any point, that its duties create an employment relationship with Client, then Counsel shall immediately notify its primary Client contact in writing. Further, Counsel agrees that:

- a. Counsel is permitted and encouraged to maintain clients other than the City of Corpus Christi;
- b. Counsel is not solely economically dependent on Client for Counsel's support;
- c. Counsel is responsible for its own training. If Counsel receives any training by Client; Counsel's training is provided only to the extent such training corresponds with training provided to Client's employees;
- d. Counsel will notify Client of any necessary changes to its scheduled services with Client at least one week in advance;
- e. Counsel's services to Client may be provided on-site or off-site, depending on the nature of each task;
- f. Counsel represents that Counsel has provided Counsel's own tools necessary to provide services to the Client. Client may provide tools as necessary to increase efficiency of provision of services to Client;
- g. Counsel is an independent contractor, so Counsel is not required to follow Client's human resources policies;
- h. Counsel is not entitled to travel expenses EXCEPT with the prior written approval of the primary Client contact on a case-by-case basis for the sole benefit of Client;
- i. Counsel is not required to provide full-time services to Client. In no week will Counsel provide more than 40 hours of service to Client. Hours of work will vary according to tasks required of Counsel.
- j. Counsel maintains its own external or home office at the aforementioned location.

- k. Counsel will invoice Client on a weekly basis, with payment to be provided within 30 days after submission of invoice. Counsel shall provide information on said invoices as required by the primary Client contact.

#### **Section 8: Federal and State Taxes**

Counsel is an independent contractor and is not an employee. Accordingly, Client shall not withhold income tax, payroll tax, social security tax, FICA, unemployment taxes, or any other taxes or fees unless such withholding is required by law for independent contractors. Counsel will provide the Client with a completed I.R.S. Form W-9, Request for Taxpayer Identification Number and Certification. Client will provide Counsel with a 1099 annually.

#### **Section 9: Notice to Counsel about Its Tax Duties and Liabilities**

Counsel understands that he or she is responsible to pay, according to law, Counsel's income taxes. If Counsel is not a corporation, Counsel further understands that Counsel may be liable for self-employment (social security) tax, to be paid by Counsel according to law.

#### **Section 10: Responsibility for Workers' Compensation**

No workers' compensation insurance shall be obtained by Client covering Counsel or employees of Counsel. **Counsel shall maintain a high standard of care when on Client's property and shall indemnify, defend, and hold Client harmless for any injury occurring to Counsel as a result of any condition of Client's property and for any actions of Counsel, regardless of the hidden nature of the condition or Client's contributory negligence in maintaining such condition.**

#### **Section 11: Employment Benefits**

Counsel acknowledges that as a non-employee of Client, he or she is not entitled to participate in any of Client's employee benefit programs, nor are his or her spouse or any dependents. Counsel hereby waves his or her right to participate in any such programs including pension, health or other fringe benefits.

#### **Section 12: Outside Activities**

Outside consulting or business opportunities are completely allowed under this agreement. Counsel may accept or engage in outside business opportunities with the understanding that such arrangements must not constitute a conflict of interest with Counsel's responsibilities under this Agreement.

#### **Section 13: General Business Expenses**

Client shall not be liable to Counsel for any expenses paid or incurred by Counsel unless otherwise agreed to in writing.

#### **Section 14: Assignability**

Counsel shall not assign, transfer, or delegate any of his/her obligations or duties in this Contract to any other person without the prior written consent of the Client. The performance of this Agreement by Counsel is the essence of this Agreement and Client's right to withhold consent to such assignment shall be within the sole discretion of the Client on any grounds whatsoever.

#### **Section 15: Qualification**

Counsel is fully capable and qualified to execute the services in this agreement and does not require any training from the Client.

**Section 16: Quality of Service**

All work will be done in accordance with the standards of the legal profession and all services are subject to final approval by a representative of the Client prior to payment.

**Section 17: Subcontractors**

Counsel may not use any subcontractor in connection with the work performed under this Agreement unless the subcontractor is approved in writing by the primary Client contact.

**Section 18: Indemnification**

**COUNSEL MUST INDEMNIFY AND HOLD CLIENT AND CLIENT'S OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") HARMLESS OF, FROM, AND AGAINST ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSSES, COSTS, LIABILITIES, EXPENSES, AND JUDGMENTS RECOVERED FROM OR ASSERTED AGAINST INDEMNITEES ON ACCOUNT OF INJURY OR DAMAGE TO PERSON OR PROPERTY TO THE EXTENT ANY SUCH DAMAGE OR INJURY MAY BE INCIDENT TO, ARISE OUT OF, OR BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, WHOLLY OR IN PART, THE PERFORMANCE OF THIS AGREEMENT, AN ACT OR OMISSION, NEGLIGENCE OR MISCONDUCT ON THE PART OF COUNSEL, OR ANY OF COUNSEL'S AGENTS, SERVANTS, CONTRACTORS, OR EMPLOYEES IN PERFORMANCE OF THIS AGREEMENT. COUNSEL AGREES TO INDEMNIFY AND SAVE HARMLESS CLIENT, ITS AGENTS, SERVANTS, AND EMPLOYEES, ("INDEMNITEES"), FROM ANY AND ALL LIABILITIES, LOSSES, DAMAGES, OR EXPENSES, INCLUDING ATTORNEY'S FEES RESULTING FROM THE NEGLIGENCE OR ACTS OR OMISSIONS OF COUNSEL, ITS EMPLOYEES, OFFICERS, AGENTS OR CONTRACTORS, WHILE IN PERFORMANCE OF THIS AGREEMENT.**

**Section 19: Confidential Matters and Proprietary Information**

Counsel recognizes that during the course of contract performance he or she may acquire knowledge or confidential information. Counsel agrees to keep all such confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, directly or indirectly, for his or her own benefit or for the benefit of another, either during or after contract performance, any such confidential information. Upon termination or expiration of this Agreement, Counsel shall deliver all records, data, information, and other documents produced or acquired during the performance of this Agreement and all copies thereof to Client. Such material shall remain the property of Client.

**Section 20: Venue and Applicable Law**

This Agreement shall be subject to all Federal, State and local laws. All duties of the parties shall be considered to have been performed in the City of Corpus Christi, Texas for the purpose of venue for any dispute. The applicable law for any legal disputes arising out of this Agreement shall be the law of Texas and such forum and sole venue for such disputes shall be the appropriate court in Nueces County, Texas.

**Section 21: Waiver**

No waiver of any breach of any term, or condition of this Agreement, shall be construed to waive any subsequent breach of the same.

**Section 22: Conflict of Interests**

Consultant agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the Client Secretary's Office, if required.

**Section 23: Captions**

The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

**Section 24: Notices**

Notices shall be in writing and delivered to:

To Client's office at:  
City Attorney's Office  
Att: Laurie Ledesma-Garcia  
1201 Leopard  
Corpus Christi, Texas 78401

To Counsel's office at:

Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
Client, State, Zip \_\_\_\_\_  
Phone No: \_\_\_\_\_

**Section 25: No Waiver**

No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.

**Section 26: Amendments or Modifications**

No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.

**Section 27: Relationship of Parties**

In performing this Agreement, both the Client and Counsel shall act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

**Section 28: Severability**

If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

**Section 29: Background Investigation of Counsel**

If required by Client, Counsel agrees to submit to a full background investigation prior to the performance of any services under this Agreement, which may include but is not limited to a criminal history check and fingerprinting. The discovery of an undisclosed criminal conviction may be grounds for immediate termination of this Agreement without prior notice by the Client, as may the conviction of Counsel during the term of the Agreement of any criminal offense.

**Section 30: Criminal Arrest and Convictions**

Counsel certifies that Counsel does not have any convictions, deferred adjudication, or unadjudicated arrest for any criminal offense constituting a Class B misdemeanor, Class A misdemeanor, or felony, except as disclosed as follows: \_\_\_\_\_ . During the term of this Agreement, Counsel will immediately notify the Client in writing of any arrest or conviction for a criminal offense constituting a class B misdemeanor, Class A misdemeanor, or felony.

**Section 31: Sole Agreement**

This Agreement constitutes the sole agreement between the Client and Counsel. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, shall not be binding on the Client.

EXECUTED by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

**City of Corpus Christi**

\_\_\_\_\_  
Ronald Olson  
City Manager

\_\_\_\_\_  
Date

**Outside Counsel**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Date