



**CITY OF PLANO  
COUNCIL AGENDA ITEM**

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		1/9/2012		
Department:		Customer and Utility Services		
Department Head		Mark Israelson		
Agenda Coordinator (include phone #): <b>Andrea Showkeir 972-941-5113</b>				
<b>CAPTION</b>				
To approve a Professional Service Agreement by and between the City of Plano and Lobbylt.com, LLC, for consulting and legislative services, and authorizing the City Manager to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2011-12</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	240,100	35,940	<b>276,040</b>
Encumbered/Expended Amount	0	-23,035	0	<b>-23,035</b>
This Item	0	-26,955	-35,940	<b>-62,895</b>
BALANCE	0	190,110	0	<b>190,110</b>
<b>FUND(S):    GENERAL</b>				
<p><b>COMMENTS:</b> Funding for this item is included in the approved FY 2011-12 Budget. Remaining balance will be used for other Contracts-Professional Services expenses. Should the City of Plano choose to continue Lobbylt.com services in future fiscal years, the total annual amount will be \$35,940. These expenditures will be made within future approved budget appropriations.</p> <p><b>STRATEGIC PLAN GOAL:</b> Entering into a Professional Services Agreement with Lobbylt.com for consulting and legislative services relates to the City's Goal of a Financially Strong City with Service Excellence.</p>				
<b>SUMMARY OF ITEM</b>				
Consulting and legislative services with Lobbylt.com. First year of services is \$26,955. Each subsequent year is \$35,940.				
List of Supporting Documents: Agreement			Other Departments, Boards, Commissions or Agencies	

November 18, 2011

Mr. Bruce Glasscock  
City Manager  
City of Plano  
1520 Avenue K, Suite 300  
Plano, TX 75086-0358

Dear City Manager Glasscock,

Following up on our discussions yesterday, I hereby propose this engagement letter and general agreement ("Agreement") between the City of Plano ("PLANO") and LobbyIt.com ("LIC") for consulting and legislative services ("Services") as further defined in the following paragraphs.

### **1. Services**

LIC shall provide the following TIER 3 Services to PLANO:

- Initial consultation to understand your needs and issues
- Registering and maintaining status as your federal representative
- Quarterly meetings with federal stakeholders
- Formulation of your issue paper used in our meetings
- Receipt of Congressional Climate™ daily emails
- Legislative Issue Alerts (as appropriate)
- Personally tailored, monthly report
- Detailed Congressional bill tracking and analysis, email updates and action recommendations
- Detailed Congressional regulation tracking, analysis, and e-mail updates
- Pertinent committee hearing attendance and e-mail updates
- Thorough evaluation of the legislative or regulatory changes you seek
- Formulation of a comprehensive plan of attack
- Strategy sessions to assess and refine efforts
- Preparation of all required correspondence
- Drafting of any specific legislative or regulatory language
- Meetings with federal stakeholders (as necessary)

In addition to the above listed services, LIC shall work towards establishing and maintaining relationships with Members of Congress, the Administration and appropriate federal agencies in order to create a groundswell of support for PLANO's legislative and regulatory goals, and work to leverage these relationships to assist PLANO in achieving its specific goal of securing additional federal funding;

### **2. Commercial Terms**

The fee, to be paid by PLANO to LIC for the above-described Washington, DC, metro area, consultation and legislative Services, is at the price of \$2,995.00, per month. The fee will be paid to LIC within thirty (30) days of invoice receipt by PLANO following the execution of this agreement.

### **3. Agreement Term**

The Services that shall be provided to PLANO for the initial term of this agreement are for ninety (90) days from the date of execution. This Agreement will begin to automatically renew for additional ninety (90) day terms, unless PLANO provides written notice to LIC of its intent to terminate the Agreement pursuant to section 9 herein.

### **4. Professional Standards**

LIC agrees to perform the Services and warrants that each of its employees, agents or contractors of LIC assigned to provide Services under this Agreement to PLANO shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that LIC shall cause the Services to be performed in accordance with generally accepted industry practices. LIC agrees to comply with all laws, registrations or any other requirements of any governing body overseeing such Services as performed in this Agreement.

#### **5. Independent Contractor**

LIC covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of PLANO; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between PLANO and LIC its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between PLANO and LIC.

#### **6. Non-Compete**

For the term of this Agreement the LIC shall not represent any entity that would be in direct competition with PLANO, nor shall the LIC represent any entity that would have an interest in conflict with the best interest of PLANO without the approval of PLANO, which shall not be unreasonably withheld. The LIC shall immediately disclose potential conflicts of interest.

#### **7. Ownership of Products**

Any and all products, reports, etc. developed by the LIC in whole or in part which are utilized, or accepted by PLANO because of the relationship between the LIC and PLANO, and any and all intellectual, property rights, including copyrights in the products, reports, etc., shall become the exclusive property of PLANO. However, LIC reserves the right to use such products, reports, etc., as long as LIC does not disclose Confidential Information, as defined below.

#### **8. Confidential Information**

LIC shall not disclose any information determined to be "confidential" by PLANO. "Confidential Information" means any information, whether or not owned by or developed by PLANO, which is not generally known and which LIC may obtain through direct or indirect contact with PLANO.

#### **9. Termination**

Either party may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Agreement, terminate further work under this Agreement, in whole or in part by giving at least thirty (30) days prior written notice thereof to the other with the understanding that all services being terminated shall cease upon the date such notice is received.

#### **10. Indemnification**

**LIC AGREES TO DEFEND, INDEMNIFY AND HOLD PLANO AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY LIC'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF LIC, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH LIC IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF PLANO, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. PLANO DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES**

AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

LIC AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND PLANO AGAINST ALL SUCH CLAIMS. PLANO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, PLANO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY PLANO IS NOT TO BE CONSTRUED AS A WAIVER OF LIC'S OBLIGATION TO DEFEND PLANO OR AS A WAIVER OF LIC'S OBLIGATION TO INDEMNIFY PLANO PURSUANT TO THIS AGREEMENT. LIC SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF PLANO'S WRITTEN NOTICE THAT PLANO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF LIC FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, PLANO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND LIC SHALL BE LIABLE FOR ALL COSTS INCURRED BY PLANO.

**11. Affidavit of No Prohibited Interest**

LIC acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interest and that the existence of a prohibited interest at any time will render the Agreement voidable. At the time of executing this Agreement, LIC will execute the Affidavit of No Prohibited Interest, attached and incorporated herein as **Exhibit "A"**

**12. Entire Agreement**

This Agreement and its attachment embody the entire agreement between the parties and may only be modified in writing if executed by both parties.

**13. Venue**

The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that that exclusive venue shall lie in Collin County, Texas.

**14. Assignment and Subletting**

LIC agrees to retain control and to give full attention to the fulfillment of this Agreement, that this Agreement will not be assigned or sublet without the prior written consent of City, and that no part or feature of the work will be sublet to anyone objectionable to City. LIC further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, shall not relieve LIC from its full obligations to City as provided by this Agreement.

**15. Governmental Immunity**

It is expressly understood and agreed that, in the execution of this Agreement, City does not waive, nor shall it be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**16. Severability**

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

The parties agree to the terms and conditions outlined herein and such agreement is evidenced by their signature below.

**CITY OF PLANO, TEXAS**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Bruce D. Glasscock  
CITY MANAGER**

**LOBBYIT.COM, LLC ,**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Diane C. Wetherbee  
CITY ATTORNEY**

**ACKNOWLEDGEMENTS**

STATE OF                            )  
  )  
COUNTY OF                        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ on behalf of **LOBBYIT.COM, LLC,**

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

STATE OF TEXAS                    )  
  )  
COUNTY OF COLLIN                )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2012, by **BRUCE D. GLASSCOCK, CITY MANAGER** of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**

**AFFIDAVIT OF NO PROHIBITED INTEREST**

I, the undersigned declare that I am not an officer or employed by the City of Plano or an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

**LOBBYIT.COM, LLC**

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Date

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_