**Agreement # 02-16716-C**
**Between the City of Saint Paul and Ward Einess Strategies, LLC**

THIS AGREEMENT, made and entered into this ~~14th day of February, 2013,~~ 2014 by and between the City of Saint Paul, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "**City**," and Ward Einess Strategies, LLC, whose address is 525 North 3rd Street, #513, Minneapolis, MN 55401, hereinafter referred to as "**Provider.**"

The City and Provider, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

**SECTION 1. Scope of Services.**

A. Provider agrees to provide state lobbying services on behalf of the City throughout the 2013 State of Minnesota regular legislative session and any special sessions. Such lobbying services will include representing the City's interests on the following legislative issues:

- All areas of state tax reform, including but not limited to changes to local government aid (LGA):
- City of Saint Paul tax policy positions, which include but are not limited to:
  - Extending to 2047 the City's half-cent sales tax, currently set to expire in 2030;
  - Extending the sunset on the use of $3.5 million of STAR funds to pay debt service;
  - Advocating for greater flexibility in the use of proceeds from the City's half-cent sales tax;
  - Securing property tax exemption for the Regional Ball Park; and
  - Extension of City's Capital Improvement Budget authority.
- Any other legislative issues arising in 2013 that may affect the City, as identified by the City.

STY addendum q Harbw

B. Provider shall work closely with City throughout the legislative session to clarify City's position, develop mutually agreed-upon strategies, and provide regular status updates, both routinely and at critical points in the legislative process.

**SECTION 2. Time For Completion.**

A. The services rendered by Provider shall be commenced upon execution of the Agreement and notification by the City to proceed and will be completed in accordance with the schedule mutually agreed upon with the City, but no later than December 31, ~~2013~~. 2014

B. Provider shall not proceed with any task without specific authorization from the Project Manager designated by the City.

C. In the event that there are delays caused by actions of the City or which may be reasonably requested by the Provider which can change the completion date, Provider shall request an extension of time for completion of the project. The Project Manager will review the request and may grant to the Provider such extensions of contract time as may be reasonable.

**SECTION 3. Billings and Payment.**

A. That for Provider's faithful performance of this Agreement, the City hereby agrees to compensate Provider in the amount ~~$15,000.00~~ $10,000.00.

B. The above amounts shall fully compensate Provider for all work and associated costs. The City will honor no claim for services and/or costs provided by the Provider not specifically provided for in this Agreement. Total costs for the project shall not exceed ~~$15,000.00~~ $10,000.00.

C. Provider shall submit an itemized invoice monthly. Upon receipt of the invoice and verification of the charges by the Project Manager, the City shall make payment to Provider within thirty (30) days.

D. In the event the Provider fails to comply with any terms or conditions of the contract or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until the City is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in the sections of this Agreement.

**SECTION 4. Project Management.**

A. The City requires the Provider to assign specific individuals as principal project members and to assure that the major work and coordination will remain the responsibility of these individuals during the term of the Agreement. Removal of any principal project member without replacement by equally qualified individuals or without the prior written approval of the City is grounds for termination of the Agreement by the City. Provider's principal project members are:

Ward Einess

J.D. Burton

B. The City has designated ~~Sarah Erickson~~ as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

**SECTION 5: City Responsibilities.**

A. The City agrees to provide Provider with access to any information from City documents, staff, and other sources needed by Provider to complete the work described herein.

**SECTION 6. Work Products, Records, Dissemination of Information.**

A. For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

*"Work product"* shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results from Provider's services under this Agreement.

*"Supporting documentation"* shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and work products generated under this Agreement.

*"Business records"* shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other forma, belonging to Provider and pertaining to work performed under this Agreement.

B. All deliverable work products and supporting documentation that result from the Provider's services under this Agreement shall be delivered to the City and shall become the property of the City after final payment is made to the Provider with no right, title, or interest in said work products or supporting documentation vesting in Provider .

C. The Provider agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the City.

D. In the event of termination, all documents finished or unfinished, and supporting documentation prepared by the Provider under this Agreement, shall be delivered to the City by Provider by the termination date and there shall be no further obligation of the City to Provider except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

E. The Provider agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

F. Provider agrees to abide strictly by Chapter 13 ,Minnesota Government Data Practice Act , and in particular Minn. Stat.§§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Provider in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Provider must comply with those requirements as if it were a governmental entity. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

**SECTION 7. Equal Opportunity Employment.**

**A.** Pursuant to Chapter 183 of the Saint Paul Legislative Code and its implementing rules, Provider will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

**SECTION 8. Compliance With Applicable Law.**

A. Provider agrees to comply with all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental

units, which are now or hereafter promulgated insofar as they relate to the Provider's performance of the provisions of this Agreement. It shall be the obligation of the Provider to apply for, pay for, and obtain all permits and/or licenses required.

**SECTION 9. Conflict of Interest.**

A. Provider agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the City.

B. Provider's acceptance of this Agreement indicates compliance with Chapter 24.03 of the Saint Paul Administrative Code: "Except as permitted by law, no City official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City."

C. Provider agrees that, should any conflict or potential conflict of interest become known, Provider will advise the Purchasing Systems Manager of the situation so that a determination can be made about Provider's ability to continue performing services under the Agreement.

**SECTION 10. Insurance.**

A. Provider shall be required to carry insurance of the kind and in the amounts shown below for the life of the contract. Certificates for General Liability Insurance should state that the City of Saint Paul, its officials, employees, agents and representatives are Additional Insureds.

1. *General or Business Liability Insurance*

**$1,500,000** per occurrence
$2,000,000 aggregate per project
$2,000,000 products/completed operations total limit
**$1,500,000** personal injury and advertising

Policy must include an "all services, products, or completed operations" endorsement when appropriate.

2. *Automobile Insurance-(*When Commercial vehicles are used in connection with a contract)

a. Bodily Injury — $ 750,000 per person
$1,000,000 per accident

b. Property Damage not less than $50,000 per accident
Coverage shall include: hired, non-owned and owned auto

*Automobile Insurance* – (When Personal vehicles are used in connection with a contract, the City is not required to be named as Additional Insured, but proof of insurance is required prior to commencement of activities.)

a. Bodily Injury — $30,000 per person
$60,000 per accident

b. Property Damage — $20,000 per accident

*Automobile Insurance* – (When Rental vehicles are used in connection with a contract, the Contractor shall either purchase insurance from the rental agency, or provide City with proof of insurance as stated above.

3. *Worker's Compensation and Employer's Liability*
   a. Worker's Compensation per Minnesota Statutes
   b. Employer's Liability shall have minimum limits of $500,000 per accident; $500,000 per employee; $500,000 per disease policy limit.
   c. Contractors with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

4. *Professional Liability Insurance* (is required when a contract is for service for which professional liability insurance is available for purchase.)

   a. $1,000,000 per occurrence
   b. $2,000,000 aggregate

5. *General Insurance Requirements*
   a. All policies shall be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if company carries errors and omissions coverage.

   b. The Provider may not commence <u>any</u> work until Certificates of Insurance covering all of the insurance required for this project is approved and the Project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.

   c. The City reserves the right to review Provider's insurance policies at any time to verify that City requirements have been met.

   d. Nothing shall preclude the City from requiring Provider to purchase and provide evidence of additional insurance if the scope of services change, if the amount of the contract is significantly increased, or if the exposure to the City or its citizens is deemed to have increased.

   e) Satisfaction of policy limits required above for General Liability and Automobile Liability Insurance, may be met with the purchase of an umbrella or excess policy. Any excess or umbrella policy shall be written on an occurrence basis, and if such policy is not written by the same insurance carrier, the proof of underlying policies shall be provided with any certificate of insurance.

**SECTION 11. Independent Contractor.**

A. It is agreed by the parties that, at all times and for all purposes within the scope of the Agreement, the relationship of the Provider to the City is that of independent contractor and not that of employee. No statement contained in this Agreement shall be construed so as to find

Provider an employee of the City, and Provider shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

**SECTION 12. Subcontracting.**

A. The Provider agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

**SECTION 13. Hold Harmless.**

A. The Provider shall indemnify, save and hold harmless, protect, and defend the City, its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including the City, resulting from any act or omission by any person employed by Provider in carrying out the terms of this Agreement.

**SECTION 14. Assignment.**

A. The City and the Provider each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Provider will assign or transfer their interest in this Agreement without the written consent of the other.

**SECTION 15. Termination.**

A. This Agreement will continue in full force and effect until completion of the project as described herein unless either party terminates it at an earlier date. Either party to this Agreement may terminate it by giving no less than thirty (30) days written notice of the intent to terminate to the other party.

B. With Cause. The City reserves the right to terminate this Agreement if the Provider violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement as determined by the City. In the event that the City exercises its right to withhold payment or terminate under this Section, it shall submit written notice to the Provider specifying the extent of such withholding or termination under this Section, the reasons therefore, and the date upon which such withholding or termination becomes effective. Upon receipt of such notice, the Provider shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

C. In the event of termination, the City will pay Provider for all services actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The Provider will deliver all work products and supporting documentation developed up to the time of termination prior to the City rendering final payment for service.

**SECTION 16: Default by Provider.**

A. In the event Provider fails or neglects to comply with any term or condition of this Agreement or to provide the services stated herein, City shall have the right, after written notice, to cease payment hereunder. This remedy shall be in addition to any other remedies, including termination, available to the City in law or equity. The City shall be entitled to recover reasonable attorney's fees and costs of collection associated with enforcing its rights hereunder.

**SECTION 17. Amendment or Changes to Agreement.**

A. City or Provider may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in

writing in advance by the City.

B. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

C. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

**SECTION 18. Notices.**

A. Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To City: J.O. Burton
~~Sarah Erickson~~
Office of the Mayor
City of Saint Paul
Room 390 City Hall
15 W. Kellogg Boulevard
Saint Paul, MN 55102

To Provider:
Ward Einess
Einess Strategies, LLC
525 North 3rd Street, #513
Minneapolis, MN 55401

**SECTION 19. Waiver.**

A. Any fault of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement's provisions.

**SECTION 20. Survival of Obligations.**

A. The respective obligations of the City and Provider under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

**SECTION 21. Interpretation of Agreement, Venue.**

A. This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation related to this Agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

**SECTION 22. Force Majeure.**

A. Neither the City nor the Provider shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and

other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive, or administrative authorities.

**SECTION 23. Entire Agreement.**

A. It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

**For the City of Saint Paul:**

*Approved as to form:*

Assistant City Attorney

*Executed:*

Director, Office of Financial Services

Funding: GL 001 09127 0219
Activity #

**For Provider:**

By

Its

By

Its Principal

Taxpayer ID: 27-4424169

Vendor #: 60749

*Prepared by: CAS/LMB/2-5-2013*
*Req.#: 30724*

Addendum to Consultant Agreement with Ward Einess and City of Saint Paul

Section1. Scope of Services

A. Provider agrees to provide state lobbying services on behalf of the City throughout the 2014 State of Minnesota regular legislative session and any special sessions. Such lobbying services will include representing the City's interests on the following legislative issues:
    - All areas of state tax reform, including but not limited to changes and to and appropriations for local government aid (LGA):
    - City of Saint Paul tax policy provisions, which include but are not limited to:
        i. Extending the use of the city's event district Tax Increment Financing authority
    - Any other legislative issues arising in 2014 that may affect the City, as identified by the City.