



RESOLUTION NO. 20240326-04

A PROFESSIONAL SERVICES AGREEMENT WITH PRIME FOCUS LLC

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center has a need to acquire a professional services contract to assist in grant writing consulting services; and

WHEREAS, Prime Focus LLC has the necessary experience and expertise to advise TexAmericas Center regarding relevant services; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of TexAmericas Center that the Executive Director/CEO is authorized to enter into a professional services contract with Prime Focus LLC to provide grant writing consulting services on the terms of agreement attached hereto.

PASSED AND APPROVED THIS 26th day of March, 2024.

A handwritten signature in blue ink, appearing to be "Jim Roberts", written over a horizontal line.

Jim Roberts, Chairman of the Board

ATTEST:

A handwritten signature in blue ink, appearing to be "Justin Powell", written over a horizontal line.

Justin Powell, Secretary

Attached: FY24 Consulting Service Agreement



**PROFESSIONAL SERVICES AGREEMENT
(Consultant)**

This Agreement between **TexAmericas Center** (hereinafter referred to as "Client") and **Prime Focus LLC** (hereinafter referred to as "Consultant") is effective as of the **1st day of April, 2024**. The parties agree as follows:

WHEREAS, the Client desires to engage CONSULTANT to provide grant writing consulting services relating to TexAmericas Center property; and

WHEREAS, CONSULTANT desires to render certain services as described in authorized work orders as may be hereafter issued and has the experience and staff to perform those services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Services. The Client hereby agrees to engage CONSULTANT, and CONSULTANT hereby agrees to perform certain services for the Client as agreed upon from time to time. Such services shall be set forth in individual work orders as may be hereafter authorized in writing by the Client and accepted by CONSULTANT. The terms and conditions of this Agreement shall apply to each Work Order, except to the extent expressly modified by the Work Order.

Section 2. Client's Responsibilities. The Client agrees to provide CONSULTANT with all existing data, plans, and other information in the Client's possession which are necessary for the performance of Services as well as right of entry for CONSULTANT's personnel and all necessary equipment to the site(s). The Client further agrees to provide any additional data, plans, or other information as may be specified in authorized work orders.

Section 3. Standard of Care and Warranty. CONSULTANT agrees that its Services will be performed with that level of professional care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and circumstances. **NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE.** CONSULTANT will not be responsible for the interpretation or use by persons or entities other than Client of data developed by CONSULTANT.

Section 4. Safety. CONSULTANT is responsible for the safety on site of its own employees. This provision shall not be construed to relieve Client or any of its vendors, or other contractors from their responsibility for maintaining a safe worksite. Neither the professional services of CONSULTANT, nor the presence of CONSULTANT's employees and subcontractors shall be construed to imply CONSULTANT has any responsibility for any activities on site performed by personnel other than CONSULTANT's employees or subcontractors.

Section 5. Time of Performance. CONSULTANT agrees to perform the Services within schedules as set forth in authorized work orders. CONSULTANT shall not be responsible for delays

in the work caused by Client or its agents, consultants, or contractors. Standby or non-productive time for delays in our work caused by Client will be charged as work time unless provided for as a separate item in the work order.

Section 6. Compensation. For CONSULTANT's performance and completion of all services, Client shall compensate as specified in authorized work orders. Such rates include labor, overhead, expenses, and profit.

Section 7. Payment. CONSULTANT shall invoice Client for Services performed on a monthly basis. Each invoice is due on presentation, is payable in the Bowie County, Texas, and is past due thirty (30) days from invoice date. Client agrees to pay interest equal to one percent (1%) plus the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year, or the next day thereafter if July 1 falls on a Saturday or Sunday. Invoices for Services performed on a time-and-materials basis will be submitted showing labor (hours worked) and total expenses. If requested by the Client, documentation will be provided by CONSULTANT at the cost of providing such documentation including labor and copying costs. Any attorneys' fees, court costs, collection fees or other costs incurred in collecting any uncontested delinquent amounts shall be paid by Client.

Payment of the fees provided for in this Contract are subject to the availability of annual appropriations by the Client, which is a political subdivision of the State of Texas. Client shall use its best efforts to obtain and appropriate funds for payment of the sums due CONSULTANT under this Agreement.

Section 8. Notices. Communications from the Client shall be to CONSULTANT's designated project manager or principal-in-charge of the work. Oral communications shall be confirmed in writing. Communications from CONSULTANT to Client shall be to Client's Executive Director.

Section 9. Cost Estimates. All cost estimates provided in association with services, either prior to accomplishment or during same, are based on a scope of services provided with same. It is expressly understood by Client and CONSULTANT that any change to said scope of services, may directly impact the cost of same. In the event that significant changes in scope are requested by Client, CONSULTANT shall notify Client in writing of the potential increase in costs associated with same and provide additional work orders as needed to address same.

Section 10. Confidentiality. CONSULTANT shall maintain as confidential and not disclose to others without Client's prior written consent, all information obtained from Client, not otherwise previously known to CONSULTANT in the public domain, as Client expressly designates in writing to be "Confidential." The provisions of this paragraph shall not apply to information in whatever form which (i) is published or comes into the public domain through no fault of CONSULTANT, (ii) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (iii) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

Section 11. Independent Contractor. CONSULTANT's relationship with the Client under this Agreement shall be that of independent contractor. The employees, methods, equipment, and facilities used by CONSULTANT shall at all times be under its exclusive direction and control,

and the Client shall not exercise control over CONSULTANT except insofar as may be necessary to ensure performance and compliance with this Agreement.

Section 12. Insurance. CONSULTANT agrees to purchase and maintain at its own expense the following insurance in amounts not less than specified herein:

	<u>TYPE OF INSURANCE</u>	<u>COVERAGE AMOUNTS</u>
A	Worker's Compensation Insurance	statutory
B	Employer Liability Insurance	\$1,000,000.00
	General Liability Insurance	\$1,000,000.00 per occurrence/per aggregate
C	Automobile Liability Insurance	\$1,000,000.00 per occurrence/per aggregate
	Professional Liability Insurance	\$1,000,000.00 per occurrence/per aggregate

Certificates of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CONSULTANT agrees to reimburse the Client for any damages sustained by the client which are covered by CONSULTANT's insurance to the extent of the limitations and exclusions contained within said insurance policies.

Client agrees to purchase and maintain at its own expense, general liability insurance in an amount necessary to provide coverage for sums up to the limit of Client's liability under the Texas Tort Claims Act.

Section 13. Indemnification. CONSULTANT shall defend, indemnify, and hold the Client harmless from and against any claim asserted by any person or entity (other than an officer, director, employee or agent of Client) arising out of (i) CONSULTANT's negligence or (ii) CONSULTANT's breach of any obligation or responsibility imposed on it by the provisions of this Agreement, subject to the limitations and exclusions contained herein in Sections 12.

Section 14. Provided CONSULTANT has been paid for its services, Client shall have the right to use the documents, photographs, drawings, and specifications resulting from CONSULTANT'S services. Reuse of any such materials by Client on any other project without the written authorization of CONSULTANT shall be at Client's sole risk. CONSULTANT shall have the right to retain copies of all such information and materials.

Section 15. Disputes. If a dispute arises relating to the performance of the Services covered by this Agreement, and legal or other costs are incurred, the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, court costs, attorney's fees, and other claim-related expenses.

Section 16. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, CONSULTANT shall be paid for services performed prior to the termination notice date plus reasonable termination expenses, including the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

Section 17. No Waiver. The failure of a party to enforce strictly any provision of this Agreement shall not be deemed to act as a waiver of any provision, including the provision not so

- A. Prime Focus LLC IS A one person firm with NO employees, IF employees are hired WORKMANS COMP insurance will be purchased.
- B. AS A ONE person firm insurance is purchased for Firm's General + Professional Liability
- C. NO COMPANY CAR EXISTS, NO travel is required for Grant Writing

enforced.

Section 18. Choice of Law. This Agreement is deemed to be made under and shall be construed according to the laws of the State of Texas. Venue for any litigation arising out of this Agreement shall be in the District Court of Bowie County, Texas.

Section 19. Successors and Assignments. The Client and CONSULTANT each binds itself and its successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; provided, however, neither party may assign this agreement or its duties and obligations hereunder without the prior written consent of the other party.

Section 20. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 21. Entire Agreement. This Agreement, including work orders authorized hereunder, constitutes the entire agreement between the parties hereto and it supersedes all prior or contemporaneous agreements, whether oral or written, with respect to the subject matter hereof. In case of conflict or inconsistency between this Agreement and any other contract documents, this Agreement shall control. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound. This Agreement is effective as of the date referenced above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two counterparts (each of which is an original) by their duly authorized representatives as of the date shown below.


TEXAMERICAS CENTER

By: 

Title: Executive Director/CEO

Date: 3/27/2024

PRIME FOCUS LLC

By: 

Title: Owner / President

Date: March 18, 2024

Grant Program Consultation and Program Identification

Date:

Client Contact Information:

Site Location Address:

Name
Title
Organization
Address
City, State, Zip
Email
Phone

Grant Program of Interest:

- Planning Grant
- Capital Grant
- State Grant
- Federal Grant

Estimated Total Project Cost?

Do you have the matching funds (Typically 20%) to submit this grant application?

Have you previously submitted a grant application for this project?

What was the outcome?

Is a copy of this application available?

Do you have a preferred engineer?

Please provide Contact Information

Is your project included in any state or local planning document?

Are you an eligible applicant for the program you seek grant funding from?

If not – do you need help in securing an eligible applicant?

Do you have site control?

Have you completed predevelopment work?

Short Project Description:

TASK 1 - Purchase Order for CRISI Grant Writing Services

Date:

TexAmericas Center (Client) seeks to engage **Prime Focus LLC** to prepare a compliant **CRISI** (Grant Program) grant for the 2024 **Application Period**.

Prime Focus LLC will provide *guidance and support* to:

- Develop the project vision and program justification which meets program requirements and addresses primary selection criteria for the grant application.
- Identify stakeholders and project beneficiaries.
- Project conference calls will be scheduled weekly to keep the support staff on task and up to date on project deliverables.
- Develop a list of materials to be posted on the applicant web page.
- Identify public data sources to support project outcomes and performance measures.

Prime Focus LLC will complete:

- Cost-benefit calculation as appropriate for the grant program.
- Financial feasibility and project readiness assessment.
- A project schedule, potential risks, and mitigation strategies.
- Environmental and employment impacts with public data.
- Innovative project contributions.
- Economic competitiveness calculations
- Provide a one-page At-A-Glance project summary to inform stakeholders.
- Prepare letters of support templates that can be customized by stakeholders.
- Grant application and documentation for submission

The Client will:

- Coordinate with the Grant Applicant (or self) to ensure they have an active UEI number to access grants.gov for online grant submissions 5 weeks prior to submission.
- **Provide appropriate preliminary engineering data that details the project design, materials, installation and maintenance.**
- Provide maps, drawings, project information, and project history.
- If desired, will provide a project webpage and graphic design artwork/templates.
- Participate in project calls with engineers and stakeholders as required.
- Circulate and collect letters of support.
- Responsible for application electronic submission.
- Contact local elected officials to promote the project after submission.

Prime Focus LLC cannot participate in any success-sharing arrangement and cannot guarantee a successful outcome for the project.

Compensation:

Assuming that the **CRISI Grant** is the application of choice, this grant Notice of Funding for 2024 has not been posted yet but is anticipated to be announced in the next 60 days. Depending on the scope of the project, i.e. a planning grant or a capital grant, and the number of project components that will be included as part of the project, it is anticipated that this application will cost between \$35,000 and \$50,000. **Within 4 days of TexAmericas defining the project** , Prime Focus LLC will provide a project estimate for the 2024 CRISI grant.

If the Client decides to cancel the project after the fourth week, the hours spent up to that point will be invoiced at a rate of \$200 per hour. This amount can **later** be credited to another grant **for the same project** within a 12-month period if there is a program which may provide a better fit. After 30 days of effort (roughly the 50% competition for the project) the full contract amount will be due if the project is canceled.

Payment for the project is required within thirty days of submission/attempted submission.

Representative Proposed Timeline*: (Subject to stakeholder availability, NOFO requirements) Assuming a 60-day Program Submission Window. Calls will be scheduled for 8-10 weekly check-ins. Topics maybe amended or moved to alternative weeks.

Week 1 – Project Scope and Outreach Features

Week 2 – Project Budget and Cost Components, Organizational Policies such as Buy America

Week 3 – Benefit Cost Development

Week 4 – Letter of Support and Outreach Elements

Week 5 – Project Management Plan, Pre-Development

Week 6 – Risk Mitigation and Sustainability Impacts

Week 7 – Merit Criteria and Project Outcomes

Week 8 - Draft document

The signature below indicates acceptance of contract provisions to develop a 2024 Grant submission.

Client

Grant Writer

Elizabeth E. Ogard
President
Prime Focus LLC
918 Fox River Drive
De Pere, WI 54115
920 217 7222
logard@primefocusllc.com

(Signature)

TASK 2 - Purchase Order for SMART Grant Services

Date:

TexAmericas Center (Client) seeks to engage **Prime Focus LLC** to prepare a compliant **SMART** (Grant Program) grant for the September **2024 Application Period**.

Prime Focus LLC will provide *guidance and support* to:

- Develop the project vision and program justification which meets program requirements and addresses primary selection criteria for the grant application.
- Identify stakeholders and project beneficiaries.
- Project conference calls will be scheduled weekly to keep the support staff on task and current on project deliverables.
- Develop a list of materials to be posted on the applicant web page.
- Identify public data sources to support project outcomes and performance measures.

Prime Focus LLC will complete:

- Financial feasibility and project readiness assessment.
- A project schedule, potential risks, and mitigation strategies.
- Environmental and employment impacts with public data.
- Innovative project contributions.
- Economic competitiveness calculations
- Provide a one-page At-A-Glance project summary to inform stakeholders.
- Prepare letters of support templates that can be customized by stakeholders.
- Grant application and documentation for submission

The Client will:

- Coordinate with the Grant Applicant (or self) to ensure they have an active UEI number to access grants.gov for online grant submissions 5 weeks before submission.
- Provide appropriate preliminary engineering data that details the project design, materials, installation, and maintenance.
- Provide maps, drawings, project information, and project history.
- If desired, provide a project webpage and graphic design artwork/templates.
- Participate in project calls with engineers and stakeholders as required.
- Circulate and collect letters of support.
- Responsible for application electronic submission.
- Contact local elected officials to promote the project after submission.

Prime Focus LLC cannot participate in any success-sharing arrangement and cannot guarantee a successful outcome for the project.

Compensation:

Assuming that the **SMART Grant** is the application of choice, this grant Notice of Funding for 2024 has not been posted yet but is anticipated to be announced in the next 60 days. Depending on the scope of the project, i.e. a planning grant or a capital grant, and the number of project components that will be included as part of the project, it is anticipated that this application will cost between \$15,000 and \$20,000. Within 4 days of TexAmericas defining the project , Prime Focus LLC will provide a project estimate for the 2024 CRISI grant.

If the Client decides to cancel the project after the fourth week, the hours spent up to that point will be invoiced at a rate of \$200 per hour. This amount can later be credited to another grant for the same project within a 12-month period if there is a program which may provide a better fit. After 30 days of effort (roughly the 50% competition for the project) the full contract amount will be due if the project is canceled.

Payment for the project is required within thirty days of submission/attempted submission.

Representative Proposed Timeline*: (Subject to stakeholder availability, NOFO requirements) Assuming a 60-day Program Submission Window. Calls will be scheduled for 8-10 weekly check-ins. Topics maybe amended or moved to alternative weeks.

Week 1 – Project Scope and Outreach Features

Week 2 – Project Budget and Cost Components, Organizational Policies such as Buy America

Week 3 – Roles and Responsibilities of Partner Applicants

Week 4 – Letter of Support and Outreach Elements

Week 5 – Project Management Plan, Pre-Development

Week 6 – Merit Criteria and Project Outcomes

Week 7 - Draft document

The signature below indicates acceptance of contract provisions to develop a 2024 Grant submission.

Client

Grant Writer

Elizabeth E. Ogard
President
Prime Focus LLC
918 Fox River Drive
De Pere, WI 54115
920 217 7222
logard@primefocusllc.com

(Signature)