

MEMORANDUM OF AGREEMENT

November 6, 2024

TO: The City of Bryan, Hugh Walker

FR: Crosswind Media & Public Relations, Thomas Graham

RE: Extension of Economic Development Consultation Scope of Work to include Communications Plan and Multi-Media Campaign for the Keep Water Local Initiative

Dear Mr. Walker,

It has been a pleasure working with you and your team to support your economic development initiatives, brand and your goals. As we move ahead, we look forward to continuing our collaboration by providing you with an additional scope of work to include a communications plan and a multi-media campaign for the Keep Water Local initiative.

By bringing public awareness to the water supply issue that the City is currently facing, educating the public, and explaining the impacts that you are facing will be key in our messaging, and our campaign.

Our economic development plan, from our initial scope of work, included the following to provide and enhance the opportunities available to the City of Bryan as well as options for media training, message development, and social media playbook:

1. Message & Research Strategies
2. Communications Support

Our additional scope of work, for the Keep Water Local campaign, proposes the following that will include the following, but is not limited to:

- Media (including media placement)
- Media relations
- Website Build
- Social Media Consultation
- Production services for video, digital & print, including direct mail
- Multi-media to include radio/TV spots (PSAs), Channel 16, and newspaper ads

Below are the specific terms of our agreement.

Scope of Work:

This scope of work outlines the message/research strategies and communications support services that Crosswind will provide for a monthly account service fee from the initial contract signed/dated 8/14/2024. Crosswind will also provide a message development document, media training and a social media handbook for the additional one-time fees as indicated below. This also includes the additional services and discussed as outlined above for the Keep Water Local campaign.

Budget/Fees:

		Monthly	Total
Monthly account service fee includes: message/research strategies and communications support		\$12,500	\$100,000
Message Development Document	One-time fee	\$6,000	
Social Media Playbook	One-time fee	\$6,000	
Keep Water Local Initiative to include: Additional \$2500/month* admin fee (x 8) Production - Creative, copywriting, website, 6-8 videos, digital ads, audio ads, social media, direct mail & print			\$ 20,000
		\$2,500	\$ 30,000
Media Outreach:			
TV			\$ 52,400
Radio			\$ 10,000
Direct Mail**			\$ 20,590
Digital			\$ 12,000
Print			\$ 5,000
Subtotal for Keep Water Local Campaign			\$149,990***
Contingency (if needed)			\$29,980

*Amount added to current Scope of Work contract

**Direct mail-all 29,511 homeowners in Bryan/College Station-minimum of one mailer after the holidays- Jan or Feb 2025

***20% contingency added for out-of-scope work and/or expanded media placement

Period of Agreement:

The period of this agreement for the ongoing monthly account services and the Keep Water Local Campaign initiative will be for eight months, effective immediately upon the return of this signed contract from November 19, 2024, to July 18, 2025. This agreement will remain in full force and effect and the rights, duties, and responsibilities of Crosswind and the client shall continue. Cancellation of the contract will require 30 days' notice by either party. The contract and its terms may be automatically renewed and/or extended beyond its current expiration date by the exchange of emails or printed documentation signed by both parties.

Upon this Agreement being fully executed and upon this Agreement's effective date of November 19, 2024, the Agreement dated August 12, 2024, is superseded by this Agreement dated November 6, 2024.

Fees, expenses and billing:

Fees, expenses and billing: Crosswind has a “know-before-you-owe” policy that consistently serves our clients by ensuring that significant projects and/or costs are agreed upon in advance and approved, in writing, before proceeding. This eliminates all surprises. The monthly service account fee + administrative fee of \$15,000/month will continue to be due on the first of the month for which service is provided.

Expenses will be billed in the subsequent month in which the expense is incurred. Crosswind invoices, including advances and other expenses owed, will be billed on the first day of the month for which service is provided, and invoices are due and payable upon receipt.

The total amount of \$375,000 is the not to exceed amount, inclusive of all costs, with this amount capturing previous services paid under the Agreement dated August 12, 2024.

Expenses and third-party contracts:

Any fees and expenses for incidental expenses which are not covered by these monthly retainers must be pre-approved in writing by the City of Bryan or the appropriate representative prior to those fees or expenses being incurred by Crosswind, except for out-of-pocket expenses incurred in the normal course of executing the responsibilities outlined in the Scope of Work section. Out-of-pocket expenses may include fees incurred in service to this contract, such as mileage, parking, tolls, and messengers, printing, mailing, taxi, rideshare or any similar project related expense not associated with Crosswind’s ordinary business operations. Incidental expenses requiring advance authorized representative approval may include such items travel costs, graphic design, mailing, media wire services, public surveys. The City of Bryan or the appropriate representative assumes full liability and responsibility for any expenditure resulting from agreements it has authorized Crosswind to enter for services from third-party vendors.

Confidentiality, Non-Disclosure, and Non-Solicitation:

Each party (the “Receiving Party”) will treat as confidential and properly safeguard any and all information, documents, papers, programs and ideas relating to the other party (the “Disclosing Party”), its operations, finances and products, disclosed to the Receiving Party and designated by the Disclosing Party as confidential or which should be reasonably understood to be confidential (“Confidential Information”). Each party may disclose Confidential Information when required pursuant to the Texas Public Information Act or similar statute or an order or requirement of a court, administrative agency, or other governmental body. In the course of performing the Services, the Agency may disclose Confidential Information as the City of Bryan shall have approved for disclosure. Information obtained from third parties shall not be subject to this Agreement. This provision shall survive the termination of this Agreement and shall remain in full force and effect for a period of one (1) year following the completion of Services. Additionally, during the term hereof and for a six-month period thereafter, neither party shall solicit, employ or attempt to employ, directly or indirectly (whether employee, consultant or otherwise) any employee of the other party (or any former employee whose employment terminated within the previous six months) without the other party’s prior written consent.

Compliance with Laws; Indemnification:

Crosswind shall comply with all applicable laws and regulations in the performance of its services. Crosswind shall indemnify and hold harmless the City of Bryan, including Affiliates and each of their respective officers, trustees, directors, agents, shareholders, employees, representatives, successors, and related companies and assigns from and against all Claims of Third Parties, and all associated Losses

(judgments, damages, costs, expenses and fees), to the extent arising out of (a) a Party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by a Party of any of its representations, warranties, covenants, or agreements under this Agreement. Again, thank you for the opportunity to work with you.

Firm's Insurance:

Crosswind agrees to have and maintain the policies set forth in **Exhibit A, Insurance Requirements**, which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City of Bryan as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City of Bryan. A lapse in any required coverage shall be a breach of this Contract.

Basic Safeguarding of Crosswind Information Systems:

Crosswind shall apply basic safeguarding requirements and procedures to protect the Crosswind's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City of Bryan. This requirement does not include information provided by the City of Bryan to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" as are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). Crosswind shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City of Bryan contract information residing in or transiting through its information system.

Please return one copy of this contract with your signature as an indication of your agreement to the terms of this letter.

[SIGNATURE PAGE FOLLOWS]

ATTEST:

CITY OF BRYAN:

Melissa Brunner, City Secretary

Bobby Gutierrez, Mayor

APPROVED AS TO FORM:

Thomas A. Leeper, City Attorney

On behalf of Crosswind Communications, LLC (dba Crosswind Media & Public Relations):

By: 

Name: Thomas Graham

Title: President & CEO

Date: 11/06/2024

EXHIBIT A – Insurance Requirements

CROSSWIND agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City of Bryan. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

CROSSWIND must deliver to the City of Bryan a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) business days of notification of the City of Bryan's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City of Bryan. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) business days **may cause the contract to be rejected**.

The City of Bryan reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

- A. **Workers' Compensation Insurance & Employers' Liability Insurance** – CROSSWIND, for any employees, shall maintain Workers' Compensation insurance for statutory limits and Employers' Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. CROSSWIND shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.

- B. **Commercial General Liability Insurance** - CROSSWIND shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City of Bryan. The City of Bryan and its agents, officers, officials, and employee shall be listed as an additional insured.

- C. **Business Automobile Liability Insurance – For any company owned vehicles**, CROSSWIND shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. CROSSWIND shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.

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- D. **Professional Liability Insurance** - CROSSWIND shall maintain Professional Liability (errors & omissions) insurance with a limit of not less than \$1,000,000. If written on a "Claims-Made" form, CROSSWIND agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of two years after the completion of this contract. CROSSWIND will be responsible for furnishing certification of coverage for two (2) years following contract completion.
- E. **Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. CROSSWIND agrees to endorse City of Bryan and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides "True Follow Form" coverage.
- F. **Deductibles, Coinsurance Penalties & Self-Insured Retention** - CROSSWIND may maintain reasonable and customary deductibles, subject to approval by the City of Bryan. CROSSWIND shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.
- G. **Subcontractors** - If the CROSSWIND's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the CROSSWIND, the Subcontractor(s) shall maintain insurance coverage equal to that required of the CROSSWIND. It is the responsibility of the CROSSWIND to assure compliance with this provision. The City of Bryan accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.
- H. **Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A- or better by AM Best Insurance Rating.
- I. **Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City of Bryan within ten (10) business days by the successful CROSSWIND's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City of Bryan. Renewal certificates shall be sent a minimum of ten (10) days prior to coverage expiration. Upon request, CROSSWIND shall furnish the City of Bryan with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
Risk Management
PO Box 1000
Bryan, TX 77805
Emailed to: lward@bryantx.gov

Failure of the City of Bryan to demand evidence of full compliance with these insurance requirements or failure of the City of Bryan to identify a deficiency shall not be construed as a waiver of CROSSWIND's obligation to maintain such insurance.

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- J. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – CROSSWIND must provide minimum thirty (30) days prior written notice to the City of Bryan of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the CROSSWIND shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City of Bryan reserves the right to withhold payment to CROSSWIND until coverage is reinstated.

- K. **CROSSWIND's Failure to Maintain Insurance** – If the CROSSWIND fails to maintain the required insurance, the City of Bryan shall have the right, but not the obligation, to withhold payment to CROSSWIND until coverage is reinstated or to terminate the Contract.

- L. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City of Bryan's review or acceptance of insurance coverage to be maintained by CROSSWIND, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the CROSSWIND under the Contract.

[END OF EXHIBIT A]