



CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is entered into on August 26, 2019, by and between The City of South Bend, Indiana Venues Parks & Arts Department, by and through its governing Board, the Board of Park Commissioners, , having its principal offices at 321 E. Walter Street, South Bend, IN 46601 (hereinafter referred to as "Sponsor"), and enFocus, a 501(c)(3) organization, having its principal offices at Studebaker Building 113, 635 S Lafayette Boulevard, South Bend, IN 46601 (hereinafter referred to as "Consultant").

WHEREAS, the Sponsor desires to obtain the services of Consultant, and Consultant desires to provide consulting services to the Sponsor upon the terms and conditions in this Agreement.

AGREEMENT

SECTION 1 – CONSULTING PERIOD

(a) Term - The Sponsor hereby retains the Consultant and Consultant agrees to render to the Sponsor those services described in Scope of Services, Exhibit A, incorporated by reference and attached hereto, for the period (the "Consulting Period") commencing on August 19, 2019 and ending on December 31, 2019.

(b) Termination - At any time, either party may terminate, without liability, the Consulting Period for any reason, with or without cause, by giving 10 days advance written notice to the other party. The Sponsor shall pay Consultant for work completed as of the date of termination, provided, however, that the Sponsor will have no obligation to pay the Consultant for any portion of the **Consultant's work with which the Sponsor is dissatisfied, as determined in the Sponsor's sole discretion.**

SECTION 2 – DUTIES AND RESPONSIBILITIES

(a) Consultant hereby agrees to provide and perform for the Sponsor those services set forth in Exhibit A.

(b) Consultant will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

SECTION 3 – COMPENSATION, EXPENSES, PAYMENT, BENEFITS

(a) In consideration of the services rendered by the Consultant under this Agreement, the Sponsor shall pay the Consultant an amount not to exceed Zero Dollars (\$0.00) (the "Contract Amount"), as further specified in Exhibit A. Notwithstanding the foregoing sentence, the Sponsor will not be required to pay any portion or installment of the Contract Amount if the Sponsor is not satisfied **with the Consultant's performance under this Agreement or any default or breach** of this Agreement by the Consultant exists, as the Sponsor may determine in its sole discretion.

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(b) Payment Terms. Invoices shall be presented as set forth in Exhibit A, and payments are due within 30 days.

(c) Sponsor hereby agrees to reimburse the Consultant for reasonable business expenses incurred by Consultant in performing its work under this Agreement, provided that the Sponsor will not reimburse the Consultant for any expenses unless said expenses were approved in writing by the Sponsor (or its representative) before being incurred by the Consultant and such expenses do not exceed the amount set forth in Exhibit A.

(d) Benefits. Other than the compensation specified in Sections 3(a), Consultant shall not be entitled to any direct or indirect compensation for services performed hereunder.

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SECTION 4 - CONFIDENTIAL INFORMATION

(a) "Confidential Information" means:

- (1) any information given to enFocus by Sponsor and clearly marked, in writing as confidential; and
- (2) any information given to enFocus by Sponsor orally that, at the time given, is stated to be confidential, and such statement of confidentiality is reduced to writing within thirty (30) days; or
- (3) any information that, by its nature, is considered confidential.

(b) enFocus agrees to keep Confidential Information confidential for a period of five (5) years from date given to enFocus, not to give in any form to a third party, and only to give to enFocus employees who have a need to know such Confidential Information in order to perform under this Agreement.

(c) Confidentiality, as stated in SECTION 4 (b), will not apply to information which:

- (1) is at the time of receipt public knowledge, or after receipt becomes public knowledge through no act of omission on the part of enFocus;
- (2) was known to enFocus, as shown by written records, prior to disclosure by Sponsor;
- (3) is received by enFocus from a third party who did not obtain the information from Sponsor; or
- (4) is required by law to be disclosed.

Consultant hereby acknowledges and agrees that all property, including, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof, that is produced under this Agreement (collectively, the "Proprietary Information"), and equipment furnished to or prepared by Consultant in the course of or incident to rendering of services to the Sponsor, belong to the Sponsor and shall be promptly returned to the Sponsor upon request.

(d) Consultant agrees to hold all **Sponsor's Proprietary Information in strict confidence and trust for the sole benefit of the Sponsor and not to, disclose, use, copy, publish, summarize, or remove from Sponsor's premises any Proprietary Information** (or remove from the premises any other property of the Sponsor)



during the Consulting Period except (i) to the extent necessary to carry out **Consultant's responsibilities under this Agreement or (ii) after termination of the Consulting Period or (iii) when the information falls within the guidelines of this Agreement.**

SECTION 5 – NOTICES

All notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the Sponsor at:

ATTN: John Martinez, Director of Facilities & Grounds City
of South Bend
Venues Parks & Arts Department
1020 High Street .
South Bend, IN 46601

With copies to:

TBD

or to the Consultant at:

ATTN: Jack Jacobs, Project Manager
enFocus
Studebaker Building 113
635 S Lafayette Boulevard
South Bend, IN 46601

Notice of change of address shall be effective only when done in writing and sent in accordance with the provisions of this Section.

SECTION 6 - AMENDMENTS AND WAIVERS

This Agreement may not be modified or amended except by an instrument in writing, signed by a duly authorized representative of the Sponsor and the Consultant. By an instrument in writing similarly executed, either party may waive compliance by the other party with any provision of this Agreement that such other party was or is obligated to comply with or perform, provided, however, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity.

SECTION 7 – INTERRUPTION OF SERVICE

Either party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, laws proclamations, edicts, ordinances or regulations, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or

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other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When **such events have abated, the parties' respective obligations hereunder shall resume.**

SECTION 8 – SEVERABILITY, ENFORCEABILITY

If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.

SECTION 9 – GOVERNING LAW

The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

SECTION 10 – INDEPENDENT CONTRACTOR

The Consultant shall operate at all times as an independent contractor of the Sponsor. No employee of the Consultant will be considered or deemed to be an employee of the Sponsor. This Agreement does not authorize the Consultant to act for the Sponsor as its agent or to make commitments on behalf of the Sponsor. The Sponsor shall not withhold payroll taxes, and Consultant shall not **be covered by health, life, disability, or worker's compensation insurance of the Sponsor.**

SECTION 11 – ABILITY TO ENTER INTO CONTRACT

Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered and that the performance of its obligations under this Agreement does not conflict with any order, law, rule or regulation or any agreement or understanding by which such party is bound.

SECTION 12 – LIMITATION OF LIABILITY; INDEMNIFICATION

(a) As a professional organization, the Consultant will perform the services described in Exhibit A to the best of their ability, striving to ensure great quality work and minimize errors or omissions. As a result, the Consultant shall not be liable to Sponsor for any loss incurred in the performance of his/her services **hereunder unless caused by Consultant's negligence or intentional acts or omissions.** Notwithstanding any provision to the contrary, the limit of **Consultant's liability under this Agreement will be equal to the limit of Consultant's professional liability insurance policy,** except with regard to any claims related to a breach of confidentiality related to third party data acquired **by Consultant and provided to Sponsor for Sponsor's use.**

(b) Sponsor agrees, at its sole cost, to indemnify and defend Consultant from and against any damages, claims or suits by third parties against Consultant arising from the performance of **Consultant's services hereunder unless caused by Consultant's negligence or intentional acts or omissions.** Subject to the limitation of liability stated in Section 12(a), Consultant agrees, at its sole cost, to indemnify and defend Sponsor (and its officials, employees, and agents) from and against any damages, claims or suits by third parties against

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Sponsor arising from the performance of Consultant's services hereunder unless caused by the negligence or intentional acts or omissions of Sponsor (or its officials, employees, or agents)

SECTION 13 – ENTIRE AGREEMENT

This Agreement is the final expression of the parties' agreement with respect to the retention of Consultant by the Sponsor for the services specified herein and may not be contradicted by evidence of any prior or contemporaneous agreement.

SECTION 14 – REMEDIES FOR BREACH OF CONTRACT

The Consultant's failure to complete the services in accordance with this Agreement will be considered a material breach. In the event of such breach, the Sponsor may suspend all payments to the Consultant, terminate this Agreement, and/or pursue any and all remedies available at law or in equity.

SECTION 15 – EQUAL OPPORTUNITY; NON-DISCRIMINATION; COMPLIANCE

The Consultant shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Consultant shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Consultant certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement. The Consultant agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute **and submit to the Sponsor a contractor's affidavit in the form** provided by the Sponsor.

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The parties have duly executed this Agreement as of the date first written above:

SPONSOR:

**CITY OF SOUTH BEND, INDIANA
VENUES PARKS & ARTS DEPARTMENT**

Aaron Perfi, Executive Director

Date: 8-26-19

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**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuela Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk

Date: 8-26-19

CONSULTANT:

enFocus

Name: Andrew Wiand

Title: Executive Director at enFocus, Inc.

Signature:

Date: 08/26/19

Exhibit A

enFocus Engagement Bloomberg Mayors Challenge

Background and Business Need

Background

The City of South Bend has proposed a new, data-driven collaboration between the City, employers, and transportation providers to provide shift workers with consistent transportation access. The City contracted enFocus (using part of the \$1 million provided by Bloomberg **Philanthropies**) to **manage the program's first phase** and operate a transportation platform for the employees of several local employers. The purpose of the pilot phase is to test, refine, and build support for the solution.

enFocus will operate this transportation platform for the employees of local employers that have agreed to participate in the expanded program phases, according to the terms of the agreement set forth in Exhibit C. This consists of professional services (project management, analytics, and administrative) to assist with the coordination of the Bloomberg Mayors Challenge project and the provision of transportation services (ride-hailing, dockless bikes/scooters, and potentially other services) for program participants. The City of South Bend has agreed to participate in this program as an employer partner in phase one.

Business Need

enFocus and the City of South Bend must work together during phase one to ensure long-term success of the program. enFocus must be able to collect an agreed-upon set of administrative data, as outlined in Exhibit B, —from the City and work with a City analyst partner to interpret the impact of the program.

Project Description

The City and enFocus have agreed that enFocus will operate one or more transportation platforms. These platforms will include at a minimum one ride-hailing provider (such as Lyft or Uber) and may or may not include dockless bike or scooter share. enFocus will engage with transportation providers to establish customer accounts and to acquire the right to use and provide certain data to the **City for the City's use, as determined by the City**. enFocus will then engage with the City to invite up to 20 employees of the Grounds department at Venues, Parks & Arts to this opt-in program and onboard those employees into the transportation

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platforms. Participants will be able to use the platforms for free or subsidized rides to and from their place of work during phase one. Various controls and limits on usage will be established by enFocus through the platforms. The City will provide data to enFocus and assist with analysis of this data to quantitatively validate the value of this program. Data analysis and iterations on the design of the program will be performed to meet the requirements of the Bloomberg Mayors Challenge. Anonymized data and overall findings will be communicated to the City to inform its program design.

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Funding and Timeline

There is no fee for the engagement entered into by this Consulting Agreement. This agreement does not represent or enforce a change to any previous or future engagement between enFocus and the City of South Bend.

Employer and Employee Contributions

The City is currently investigating the possibility of requiring participating employees to contribute financially towards the transportation services provided through this pilot. If this occurs, financial contributions from the employees will be made in addition to the contribution specified in this agreement.

Duration

- Initiate engagement on August 19, 2019
- End engagement on December 31, 2019

enFocus Resources

enFocus staff assigned to this project will continue to operate as independent enFocus employees operating under the enFocus employee handbook, wages, benefits, working conditions and any/all other enFocus policies.

Entrepreneurial Project Flexibility

At enFocus, we place value on our *entrepreneurial* focus and approach to projects. We have had historical success for clients when we reserve the option to initiate conversation with the client for a project pivot when we see a better path or opportunity to pursue that can lead to greater success. This is not meant to mitigate enFocus of project responsibility but rather to create a scenario that will produce the most valued outcome for the City.

Stakeholder Management

The stakeholder from the City is recognized to be:

- 1) TBD



In client engagements, enFocus identifies a champion on the client side to ensure seamless project execution. The client champion will be responsible for project communication and billing clearance. TBD is the Project Champion.

Feedback

enFocus places great value on the relationship with the City of South Bend. Please let us know how we can continue to support the City and its initiatives. We are very excited to participate in whatever way we can to create the highest degree of success for the City.

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Exhibit B

Data Sharing Agreement

Data Sharing Request

As part of this Phase One pilot, the City will provide selected data as inputs to an evaluation to be conducted by enFocus of the estimated financial impact of this program. The specific discrete data requested is outlined below. In addition to discrete data outlined, enFocus will collaboratively work with selected City stakeholders to define estimated costs for inputs such as 1. cost of turnover, 2. cost of absences, and 3. cost of late arrivals. This collaboration will enable a robust evaluation of the impacts of this program and inform future possible investments.

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Scope:

Temp, shift employee, and front-line manager staff at the following business units:

- Grounds department at VPA

Time Periods:

- August 19 to December 31, 2019 (reported bi-weekly per pay period during Phase 1)
- August 19 to December 31, 2018 (deidentified, single report)
- August 19 to December 31, 2017 (deidentified, single report)

Data Reporting Template:

Employee ID (De-identified)	Pay Range (\$/hr)	Pay Period	Enrolled in Program (Y/N)	# Unexcused Absences	# Tardies
1637	\$10-12	09/22/19 - 09/28/19	Y	1	0
1637	\$10-12	09/22/19 - 09/28/19	N	0	1
9480	\$12-14	09/22/19 - 09/28/19	Y	0	0
4131	\$10-12	09/22/19 - 09/28/19	Y	0	0

Exhibit C

Prior to participation in the program, enFocus will require any employee participant to execute the agreement below, either digitally or on physical copy. This agreement is intended to cover the duration of the Phase One program, as well as any future engagements where enFocus provisions similar transportation services, with prior consent of the City.

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Participant Terms and Conditions, Waiver

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Background

The City of South Bend has partnered with enFocus, Inc. (enFocus), to create a program that provides eligible participants with transportation options for getting to and from their workplace.

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Terms and Conditions

From this point on, **the transportation program will be referred to as "The Program."** **Transportation providers will be referred to as "Providers."** Eligible participants will be referred to as **"Users."** ***Participation in The Program is optional.***

- **Users of The Program will access some Providers' technology** platforms to request transportation services from Providers. enFocus is **responsible for maintaining Users' access to limited discounts on Providers' transportation services. These discounts can be changed or canceled at any time.** Because enFocus does not provide transportation, it cannot guarantee availability, timeliness, or other services on behalf of Providers.
- enFocus will have access to certain data from Providers that will provide detailed trip information of Users. This information may include name, trip request time and date, drop-off time and date, pick-up and drop-off address, trip route, distance, duration, fare amount, and service type. enFocus may analyze this data and provide it to third parties, including the City of South Bend.
- Users must be at least 18 years old.

Text Messaging Terms & Consent

As part of The Program, enFocus, on behalf of the City of South Bend, may text Users at their provided mobile telephone number. These texts will provide information, give surveys, and collect feedback. Message and data rates may apply. Users will be asked to opt in to further messages. Users may text **'STOP' to stop receiving texts.** Users may text **'HELP'** for additional information.

Assumption of Risks



My optional participation in The Program involves certain risks that cannot be eliminated. These risks include personal injury, accidents or illnesses (including death), property loss, and financial loss, arising from, but not limited to, participation in The Program. I have read this document and acknowledge and understand these risks.

Indemnification and Hold Harmless

I agree that enFocus and my employer are not liable for any actions, suits, procedures, costs, expenses, damages or **liabilities, including attorney's fees**, associated with participation in The Program. In addition, I agree to reimburse enFocus and my employer for costs associated with claims and to provide enFocus and my employer with a defense of such claims.

Severability

The terms and conditions, waiver, assumption of risks, and indemnity agreements are as broad and inclusive as allowed by the State of Indiana. If any section is ruled invalid, the remaining sections will still be in effect.

Acknowledgement of Understanding

I have read this document in full. I understand that I may be giving up substantial rights, such as the right to sue. I agree that I am signing this document voluntarily. My digital signature represents my understanding of this **document's information**.

For Completion by Participant

Who is your employer? _____
A. City of South Bend – VPA

Signature: _____

Printed Name: _____

Date: _____

Email Address: _____

Cell Phone Number: _____

[] I agree to receive text messages related to the program. Message and data rates may apply.

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