



## CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is entered into on June 15, 2020, 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 219 S St. Louis Boulevard, South Bend, IN 46617 (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").

### Consulting Agreement

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

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#### SECTION 1 – CONSULTING PERIOD

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(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 June 14, 2020 and ending on December 31, 2020.

(b) Termination - At any time, either party may terminate, without liability, the Consulting Period for any reason, with or without cause, by giving 14 days advance written notice to the other party. The Sponsor shall pay Consultant for services rendered as of the date of termination.

#### 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 five hundred dollars (\$500.00) (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 breach of this Agreement by the Consultant exists.

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

(c) 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.



#### 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.

- (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.

(d) 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: Jonathan Jones, Director of Recreation  
Venues Parks & Arts, City of South Bend, Indiana  
219 S St. Louis Boulevard

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South Bend, IN 46617

With copies to:

or to the Consultant at:

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

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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 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 total amount paid by Sponsor to Consultant under this Agreement, 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 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.

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## 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 Perri, Executive Director

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

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CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS

\_\_\_\_\_  
Mark Neal, President

\_\_\_\_\_  
Consuela Hopkins, Vice President

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\_\_\_\_\_  
Aimee Buccellato, Member

\_\_\_\_\_  
Dan Farrell, Member

ATTEST:

\_\_\_\_\_  
Eva Ennis, Clerk

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

CONSULTANT:

enFocus

Name: Andrew Wiand

Title: Executive Director at enFocus, Inc.



Signature:

*Andrew Wilson*

Date:

6/10/2020

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## 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 and operate a transportation pilot program for the benefit of local workers. The purpose of the pilot is to test, refine, and build support for the solution.

Consultant will operate this transportation platform for participants selected by Sponsor that have agreed 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 for program participants. Sponsor has agreed to participate in this program.

For the purposes of the Program governed by this agreement, participation will be limited to those employees participating in the City's 2020 Youth Jobs SB, which means employees aged 21 and under working on a temporary basis within Venues Parks & Arts. This program may only be extended to other City employees through a separate agreement.

### Business Need

Sponsor will contribute an agreed-upon amount to support delivery of the pilot program. Consultant will collect an agreed-upon set of administrative data—including personally-identifiable information (PII)—from Sponsor and work with Sponsor to interpret the impact of the program. Consultant will treat this PII as confidential and de-identify it before sharing any analysis with any third-party partners, including the City of South Bend. The data requested for this engagement is outlined in Exhibit B.

### Project Description

Consultant will coordinate delivery of one or more transportation solutions for selected participants. These platforms will include a technology-supported carpool reimbursement program and access to local bus

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system passes. Client will engage with transportation providers to establish customer accounts and to acquire the right to use and provide certain data to third parties, including the City of South Bend. Consultant will engage with Sponsor to invite up to 80 selected participants from Sponsor's organization, located at selected VPA locations only, to this opt-in program and onboard those participants into the transportation platforms. Participants will be able to use the platforms for free or subsidized rides to and from their place of work. Various controls and limits on usage will be established by Consultant through the platforms. Sponsor will provide data to Consultant and assist with analysis of this data to quantitatively validate the value of this program. Anonymized, non-identifiable data and overall findings will be communicated to third parties to inform its program design. Consultant will provide to Sponsor monthly reports describing program usage in aggregate, including discounts and subsidies provided and trips taken. Consultant will not provide any participant-specific trip details without consent of participant as per the terms in Exhibit C.

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### Duration

- Initiate engagement on June 14, 2020
- End engagement on December 31, 2020

### Billing

Consultant will invoice Sponsor within 30 days of the first ride being provided to a Sponsor participant. Payment will be due within 30 days of the invoice's transmission.

### enFocus Resources

Consultant 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.

### Stakeholder Management

The stakeholder from Sponsor is recognized to be:

- 1) Jonathan Jones, Director of Recreation

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. The stakeholder listed herein is the Project Champion.

### Feedback

enFocus places great value on the relationship with Sponsor. Please let us know how we can continue to support Sponsor and its initiatives. We



are very excited to participate in whatever way we can to create the highest degree of success for Sponsor.

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## Exhibit B

### Sponsor Data Sharing

#### Data Sharing Request

As part of this pilot, Sponsor agrees designate a Data Champion in Sponsor's organization to facilitate data transfers. The selected data will be used as inputs to an evaluation to be conducted by Consultant of the estimated financial impact of this program. The data requested is outlined below. Consultant acknowledges that the eventual report structure will depend on Sponsor's employee data reporting systems. Thus, Sponsor will work to collaboratively define the specific data to be shared with Consultant, understanding that the data outlined below may not be available or may not able to be shared due to employee privacy considerations.

All data transfers prescribed by this Exhibit between Sponsor and Consultant will occur on a regular basis and according to a secure data transfer method that is mutually agreed-upon in advance.

Scope:

All participating employees

Time Periods:

- All pay periods for which participant is enrolled in the Program

Employee Attendance Report

- Employee ID (anonymized by Sponsor or Consultant)
- Department or Business Unit (if applicable)
  -
- Time period (Pay Period or other standard time period)
- Total shifts or total hours worked
  - Absence occurrences
  - Tardiness occurrences
    - Time missed, if possible
- Separations with date
- Additions (new hires) with date

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## 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 current or future pilots where enFocus provisions similar transportation services, with prior consent of Sponsor. In the case of minors participating, a parent or guardian must sign.*

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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.

### 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. 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? \_\_\_\_\_

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.

**Parental Consent (required for participants under the age of 18)**

And I, the parent and/or legal guardian of the minor listed above, in consideration of them being a User in The Program, further 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 the minor's participation in The Program. In addition, I agree to reimburse enFocus and my employer for costs associated with claims on behalf of the minor and to provide enFocus and my employer with a defense of such claims.

Signature: \_\_\_\_\_

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Printed Name of Parent/Guardian: \_\_\_\_\_

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

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