



PROFESSIONAL SERVICES AGREEMENT

PROJECT – PROJECT #

FIRM NAME – CONTRACT #

Article 1. Agreement and Term

- 1.1 This Agreement is between the Port Authority of San Antonio (the “Authority” and “Owner”), a Texas Defense Base Development Authority, with its headquarters located at 907 Billy Mitchell, San Antonio, Texas 78226, and Firm Name (hereinafter referred to as “Consultant”), an independent contractor, with its principal place of business at Firm’s Complete Address (Street, City, State, ZipCode), (the Authority and Consultant, hereinafter collectively, the “Parties”), for the Project Title/Description in accordance with Consultant’s proposal, dated _____, for an amount not to exceed \$_____. This agreement encompasses the requirements specified herein.
- 1.2 Consultant agrees to perform the Services described herein for the basic contract period of _____, directly or by engaging the services of appropriate employees and/or sub-consultants/contractor(s).
- 1.3 Consultant shall provide services in accordance with the Authority’s requirements for the Basic Contract Period. No effort shall be incurred without the Owner’s President & CEO or designee approval until a formal written amendment is executed between the Parties to this Agreement.

Article 2. Scope of Services and Compensation

- 2.1 See Attached Attachment “A” entitled “Scope of Services and Compensation.”

Article 3. **Payment**

- 3.1 The Consultant shall submit a valid invoice to Attention: Account's Payable Office, 907 Billy Mitchell, San Antonio, Texas 78226, within 15 days of completed monthly progressive services in accordance with the terms represented in Consultant's proposal for delivery of the scope of work. A valid invoice is one 1) which contains all applicable information (i.e.; contract numbers as provided in writing) and 2) where the Owner can verify the amount of itemized services / supplies provided. The Owner will make payment within 30-days of its Accounts Payable Office's receipt of a valid invoice.
- 3.2 Consultant shall also include in each monthly progress invoice monthly applicable actual expenses incurred while traveling that are necessary to successfully complete the Services, including contract-specific long distance (or cellular) telephone calls, facsimile transmissions, postage, photocopying, advertising, meals, travel, lodging, and other necessary and proper costs which shall be advanced by Consultant and reimbursed by the Authority upon presentation of the receipts and an itemized statement therefore. No expense in excess of \$500.00 shall be incurred without the prior approval of the Authority. The Authority will not reimburse for first class travel or other luxury expenses that are considered unnecessary or inappropriate to the services provided. The Authority will approve all travel in advance.

Article 4. **Termination**

- 4.1 Either party to this Agreement may terminate the agreement on thirty (30) calendar day written notice, which notice shall be provided in in writing and deemed to be fully given upon receipt at the Parties' addresses provided herein or at such other addresses as the Parties may provide in writing to the other from time to time.
- 4.2 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such

performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

4.3 Regardless of how the Agreement is terminated, Consultant will affect an orderly transfer to Owner or to such persons as the Owner may designate, at no additional cost to Owner, all completed or partially completed documents, papers, records, and other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant. Any record retention shall be completed within thirty (30) calendar days of written termination notice. Final payment of compensation due or to become due to Consultant is conditioned upon delivery of such documents, if requested.

4.4 Upon receipt of a written termination notice, Consultant shall cease all work. Owner will reimburse Consultant for approved work accomplished up to the point of termination notice receipt. Within thirty (30) calendar days of the effective date of completion or termination or expiration of this Agreement, Consultant shall submit to Owner its claim for monies owed by Owner for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said thirty (30) calendar days shall negate any liability on the part of the Owner and constitute a waiver by Consultant of any and all right or claim to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

Article 5. Alterations or Additional Services

5.1 Changes to this Agreement may be accomplished by the issuance of a mutually approved written amendment hereto. Amendments may involve increases or decreases in the Owner's Requirements and compensation therefore. No effort shall be incurred by Consultant or paid for by the Port, beyond the agreed upon scope of work, amounts negotiated, or the associated period of performance without a formal written amendment executed between the Parties to this Agreement.

Article 6. **Work Product**

6.1 All work product, including, but not limited to, documents, strategic material, plans, correspondence, agreements and reports, and all parts thereof, which are prepared in the performance of this Agreement will be the exclusive property of the Owner. There will be no limitations upon the Owner as to subsequent use of the materials, plans, or ideas incorporated into the work product and the Owner will have the full and free right to use such property at its discretion, either directly or through agents or otherwise without further compensation paid to Consultant; however, the Owner does agree to release Consultant of any liability related to the reuse of the materials, or reports by others.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from this documentation or the Services provided, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant agrees that Owner shall have access to any and all such documents at any and all times, as deemed necessary by Owner, during said retention period.

Article 7. **Adherence to Laws**

7.1. This Agreement will be construed in accordance with the laws of the State of Texas. The parties hereto agree that any action related to this Agreement will be brought solely in the District Court of Bexar County, Texas and nowhere else. Each provision and clause required by state and federal law to be inserted into the Agreement will be deemed to be included herein and the Agreement will be read and enforced as though each were included herein. If through mistake, or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement will be mutually amended to make such insertion, on application by either party.

- 7.2. Consultant agrees that in carrying out its duties and responsibilities under this Agreement, it shall neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulation in effect in the United States; or (ii) would have the effect of causing the Owner to be in violation of any laws, decrees, rules, or regulations in effect in the United States. The Consultant will protect, defend and indemnify the Owner and its officers, Board members, employees and agents against any claim or liability from or based on any violation of the same.
- 7.3 Consultant agrees that in connection with this Agreement, it shall not, directly or indirectly, give, offer, or promise, or authorize to be given, offered, or promised, anything of value to any entity or individual with the intent to (i) influence any act or decision of such entity or individual, or (ii) induce such entity or individual to use their influence to affect or influence any act or decision in order to assist the Owner. Consultant agrees to notify the Owner immediately of any solicitation, demand, or other request for anything of value, by or on behalf of any entity or individual, relating to the subject matter of this Agreement.

Article 8. Confidentiality

As part of the total compensation which the Port has agreed to pay Consultant for the services to be rendered under this Agreement, Consultant agrees that all finished and unfinished material which are produced by Consultant are, and will remain, the property of the Port. Consultant shall not use such work products for Consultant's purposes unless Consultant receives advanced written permission from the Port.

Commercial, financial, proprietary and confidential information relating to this Agreement, which is gathered or exchanged by the Parties prior to or during the term of this Agreement shall be maintained in confidence and such information shall not be utilized except for the purposes of the work activity of this Agreement. Such shared information will not be disclosed to any third party except as there is a good faith need

to know in the ordinary course of business until the expiration of the confidentiality period, which is deemed to be five years from the date of this Agreement.

Any confidential information that is written, other than that prepared specifically for or by Consultant will be returned to the Port immediately upon the Port's request and Consultant will retain no copies. Notwithstanding anything stated above, until the expiration of the confidentiality period, in the event that Consultant is required or requested to disclose any confidential information provided to it by the Port in connection with a request to Consultant pursuant to the Texas Public Information Act, Consultant will in advance of such disclosure provide the Port with prompt notice of such request to provide an opportunity to object.

Article 9. Consultant's Accounting Records

9.1 Consultant shall keep accurate accounting records related to performance of all work performed under the Agreement and cause its sub-Consultants to do the same. All such records shall be kept by Consultant for a period of not less than two (2) years and shall be made available to the Owner, the Owner's Board of Directors, and/or any the Owner grantor agency for inspection, audit, or copying upon reasonable request.

Article 10. Insurance

10.1 Consultant agrees to maintain the below listed Insurance to cover all of its own personnel engaged in performing services for the Owner under this Agreement in not less than the following amounts:

Professional Liability

\$1,000,000.00 each occurrence

\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services and if written on a claims made basis shall provide coverage for an additional 24 months after completion date of contract.

Worker's Compensation - Statutory Amount

Employer's Liability - \$500,000.00

Commercial General Liability

Personal injury and property damage:

\$1,000,000.00 combined single limit each occurrence and

\$2,000,000.00 aggregate

Business Automobile Liability for all vehicles (owned/leased vehicles; non-owned vehicles; hired vehicles)

Bodily injury and property damage:

\$500,000.00 combined single limit any one accident.

Umbrella Liability

\$1,000,000.00

- 10.2 Consultant shall add the Owner and its Board of Directors, together with their respective officers, elected officials, employees, and representatives, individually or collectively, as additional insureds on all required insurance policies, except workers' compensation, and any errors and omissions insurance that the Consultant might carry. The Commercial General Liability Policy and Excess Liability Policy (Umbrella Form) shall be of an "occurrence type" policy. Workers' compensation and employer's liability policies will provide a waiver of subrogation in favor of the Owner. Other appropriate coverages will also contain a similar waiver of subrogation clause. The Commercial General Liability Policy shall also include protection against claims insured by usual personal injury liability coverage, and a "protective liability" endorsement to ensure contractual liability assumed by Consultant under Article 11 entitled "...Indemnification."

10.3 Consultant shall furnish the Owner original completed Certificate(s) of Insurance within five (5) business days of the effective date of this Agreement, which confirms that all required insurance policies, are in full force and effect. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions Consultant shall ensure its insurance company incorporates at least a thirty (30) calendar day cancellation notice on the policy. Insurance coverages shall be written by companies authorized and admitted to conduct business within the State of Texas and rated A- or better by A.M. Best Company, or are otherwise proven acceptable to the Owner. Surplus lines carriers offering coverages need not be "Admitted Carriers" in the State of Texas, but must otherwise demonstrate their financial strength and reputation to the Owner in consultation with its insurance advisors. Consultant shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage required by this Agreement.

Article 11. Resolution of Disputes: Mediation

11.1 Any dispute or difference between the Parties arising during the term of this Agreement, out of or in connection with this Agreement shall be referred for resolution to the senior management of the Parties. Any such dispute or difference which has not been resolved as aforesaid within twenty (20) calendar days from the date the dispute or difference is first so referred for resolution, shall, if the Parties are unable to resolve the matter through another form of alternative dispute resolution, be referred to mediation.

11.2 The electing Party may initiate such mediation by giving ten (10) calendar days' written notice to the other Party of its intention to do so. The mediation shall be held in San Antonio, Texas or such other location as may be mutually agreed and conducted in accordance with the rules of the American Arbitration Association (AAA Construction/Industrial). If the Parties involved are unable to agree on a single

mediator within twenty (20) calendar days of such notice, each party shall select a list of three (3) mediators within thirty (30) calendar days of such notice, and the parties agree to act in good faith to select an agreed upon mediator. Each Party involved shall be responsible for all expenses and costs of its officers, employees, agents, or the like related to such mediation. Pending final resolution of the matter, the Parties shall proceed diligently with performance of this Agreement according to the instructions of the Owner's authorized representative. Any timeline requirement in this Article may be extended by mutual agreement of the parties.

- 11.3 If the parties are unable to select a mediator, of the mediation is not successful, then the parties agree that any action related to this Agreement will be brought solely in the District Court of Bexar County, Texas and nowhere else.

Article 12. Indemnification:

- 12.1 Consultant shall indemnify and hold harmless Owner, owner's officers, directors, employees, and agents (collectively, the "Owner Group") from and against all claims, costs, losses, liabilities and damages (including but not limited to all attorneys' fees and fees and charges of other professionals and all court, mediation or other dispute resolution costs) relating to the Services, whether in contract, statute, or tort (including without limitation negligence) (collectively, the "Claims") asserted by a third party against any member of the Owner Group arising out of or resulting from (a) the negligent performance of the Services, fraud, or intentional misconduct by the Consultant or its partners, employees or agents (collectively, the "Consultant group"), and (b) any claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, caused by any negligent act or omission of any member of the Consultant Group, any individual or entity directly or indirectly employed by Consultant to perform or furnish any of the work or anyone for whose acts any of them may be liable, and conditioned as well for the payment of claims for equipment and material, and laborers' wages.**

12.2 In any and all claims against any member of the Owner Group by any member of the Consultant Group (or the survivor or personal representative of such member of the Consultant Group) any individual or entity directly or indirectly employed by Consultant to perform or furnish any of the Services or anyone or whose acts any of them may be liable, the indemnification obligation under paragraph 12.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

12.3 As the Services are intended for the Owner and not third parties, the Owner to the extent allowed by law, agrees to release, indemnify and hold harmless the Consultant and its members, partners, employees, contractors, agents and affiliates (collectively, the "Consultant Group") from and against any and all claims, liabilities, or expenses (including attorneys' fees) relating to the Services or Deliverables in contract, statute, or tort (including without limitation negligence) (collectively, the "claim" asserted against any member of the Consultant Group by a third party. The Owner further agrees to release, indemnify and hold harmless Consultant Group from any direct or third-party Claims relating to the Services attributable to any misrepresentations made by the Owner.

Article 13. Independent Contractor Status

13.1 Consultant shall provide to the Owner the personal and technical consulting services hereunder. Consultant shall act in accordance with its own expertise, experience, manner, and methods and through its own duly authorized employees or agents and shall comply with all applicable laws, rules, and regulations governing the performance of Services. The parties recognize that Consultant is an independent contractor and not an employee, agent, partner, joint venture affiliate, or legal representative of the Owner. Consultant at no time will hold itself out as an agent, subsidiary, or affiliate of the Owner for any purpose, including reporting to any governmental authority, and shall have no authority to bind the Owner to any obligation. The personnel performing the Services

shall at all times be under Consultant's exclusive direction and control and will be employees of Consultant and not employees of either an employee leasing firm or the Owner.

13.2 Consultant's personnel assigned to the project shall possess sufficient skills and expertise, and provide any certification(s) to prove qualifications as required to satisfactorily meet all specifications and obligations of Consultant under this Agreement consistent with Consultants providing similar types of services in the industry. The Owner retains the right to reject or require Consultant to remove any employee whose qualifications or performance that, in the Owner's good faith and reasonable judgment, do not meet the standards established by both parties necessary for performance of the Services hereunder. Consultant agrees that it shall obtain the written consent of The Owner's President & CEO or his designee prior to modifying, changing and/or deleting any key personnel assigned to this Project. The roles of _____, _____, as key personnel and point of contact assigned to this Project, have been approved by the Owner. No such approval will relieve the Consultant from any of the obligations of this Agreement with the Owner.

13.3 Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters. Consultant shall be liable for failure to pay such taxes and hereby indemnifies and agrees to hold the owner harmless from and against any loss, cost, or expense incurred by the owner due to failure of consultant to withhold any such taxes or to make such contributions in respect to any compensation the owner pays to consultant.

Article 14. Miscellaneous

14.1 *Notice:* Any legal notice or other formal communication pursuant to business contemplated herein shall be in writing and shall be deemed to have been fully given

upon receipt at the following addresses or such other address as the parties may provide in writing to the other from time to time.

Port Authority of San Antonio
907 Billy Mitchell Blvd.
San Antonio, Texas 78226-1802
Attention: President & CEO or designee
Facsimile: 210/362-7807
Telephone: 210/362-7800

If to Consultant, to:

Attention: _____
Telephone: _____
Facsimile: _____
Email: _____

14.2 *Waiver of Breach:* The waiver by either party hereto of any breach of the terms and conditions hereof will not be considered a modification of any provision, nor will such a wavier act to bar the enforcement of any subsequent breach. No waiver, change or modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party.

14.3 *Third Party Beneficiaries:* No provision of this Agreement will in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or of any one or more of the terms

hereof, or otherwise give rise to any cause of action in any person not a party hereto. Further, the Consultant will perform the Services provided in connection with this engagement solely for the benefit and use of the Authority. The Consultant does not anticipate and does not authorize reliance by any other party on its professional services. Any amendment to this provision must be made through a written document signed by the Authority and the Consultant.

14.4 *Assignment:* In performing the Services hereunder, Consultant with the Owner's consent may assign its rights to perform a portion of the Services to, and may engage the services of, independent contractors. If such subcontract or assignment is made, the Owner agrees that, unless the Owner contracts directly with Sub-Consultant, all of the applicable terms and conditions of this Agreement shall apply to the Sub-Consultant. The Consultant agrees that it shall not permit any Sub-Consultant to perform any work relating to the Services until the Sub-Consultant agrees to be bound by the applicable terms and conditions of this Agreement. Consultant further agrees that it will remain primarily responsible for the Services, unless the Owner and Consultant agree otherwise, and Consultant will supervise the work of Sub-Consultant to ensure that the work performed relating to the Services is in accordance with applicable professional standards.

14.5 *Entire Agreement:* This Agreement, and any Statement of Work hereto, constitutes the entire Agreement between the Owner and Consultant and supersedes all previous agreements, whether oral or written. This Agreement will not be modified or amended except by a written document signed by the parties hereto. The formal solicitation documents used to create this award are hereby incorporated. If this Agreement and formal solicitation have conflicting provisions, the Agreement will take precedence.

14.6 *Taxes:* The Owner is a Texas Defense Base Development Authority and a political subdivision of the State of Texas, and as such, is a public tax-exempt organization. The Owner is exempt from certain sales and use taxes with respect to the purchase price

or rental price of all materials, supplies, equipment and consumables that are used by Consultant in performance of the Agreement, and Consultant shall not invoice or charge the Owner for such taxes. Consultant will be provided with a sales tax exemption certificate upon request for such purchases or rentals.

14.7 *Prompt Action:* The parties hereto mutually represent and warrant to each other that they will use their best efforts and reasonable diligence to satisfy their responsibilities under this Agreement in a timely and professional manner.

14.8 *Force Majeure:* Neither the Owner nor Consultant will be considered to be in default of this Agreement if delays in or failure of performance is due to any cause of Force Majeure. The party adversely affected by a Force Majeure will use best efforts to mitigate the impact of the Force Majeure. The term Force Majeure means any event that is beyond the reasonable control of the non-performing party (including delays caused by the other party or third parties acting on behalf of the other party) and that results in the prevention or delay of performance by a party and any Act of God including, but not limited to, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, acts of terrorism, strikes, or other labor disturbances, and judicial restraint or inability to procure permit, licenses or authorizations from any state, local, or federal agency for any of the supplies, materials, accessories, or services required to be provided by either the Owner or Consultant under this Agreement.

14.9 *Headings:* The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive legal significance interpreting this Agreement.

14.10 *Permits, Licenses and Registrations:* Consultant shall obtain all necessary permits, registrations, licenses, and any other forms of documentation required relating to the Services at its sole cost unless the law or regulation governing such permitting, licensing, or registration requires that the Owner do so. Upon request, the Consultant

shall promptly furnish the Owner copies of all permits, registrations, licenses, or other documentation applicable to this Agreement.

14.11 *Non-Discrimination:* Under Article 6252-16 of the Revised Civil Statutes of Texas, no person will, on the grounds of race, religion, gender, age, physically challenged condition or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of Consultant and the Owner.

14.12 *Email Communication:* The Consultant disclaims and waives, and the Authority hereby releases the Consultant Group from, any and all liability for the interception or unintentional disclosure of email transmissions or for the unauthorized use or failed delivery of emails transmitted or received by the Consultant in connection with the Services the Consultant is being engaged to perform under this Agreement.

14.13 *Severability:* If any clause or provision of the Agreement is held invalid, illegal or unenforceable under present or future federal, state, or local laws, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of the Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

14.14 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision of this Agreement.

13.14 PARTIES represents and warrant that they are authorized and qualified to conduct business in the State of Texas and the execution delivery and performance of this Agreement has been duly authorized and this Agreement constitutes the legal, valid and

binding obligations of the PARTIES, enforceable against the PARTIES in accordance with its terms.

This agreement is effective from the signature date below and it is hereby agreed to and executed by the Parties.

Port Authority of San Antonio
907 Billy Mitchell Boulevard
San Antonio, Texas 78226-1802

TBD
Address
City/State/Zip

By: _____

By: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT "A"

PROJECT

TBD – XXPS-XXXX

Consultant's Proposal

attached hereto and made a part hereof this Agreement)

