

Professional Services Agreement

This Services Agreement (this "**Agreement**"), dated as of _____ (the "**Effective Date**"), is by and between the Hancock County Port and Harbor Commission (the "**Commission**") and _____ (the "**Contractor**"), and together with the Commission, the "**Parties**").

WHEREAS, Contractor has the capability and capacity to provide certain _____ services; and

WHEREAS, the Commission desires to retain Contractor to provide the said services under the terms and conditions hereinafter set forth, and Contractor is willing to perform such services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Services of Contractor. Contractor shall provide to the Commission the services (the "**Services**") set forth in Contractor's Proposal, attached hereto and fully incorporated herein as Exhibit "A" ("**Contractor's Proposal**"). The Services shall be provided (a) in accordance with the terms and subject to the conditions set forth in this Agreement and any Exhibits attached hereto; (b) using personnel of required skill, experience and qualifications; (c) in a timely, workmanlike and professional manner; (d) in accordance with generally recognized industry standards in Contractor's field; and (e) to the reasonable satisfaction of the Commission.

2. Period of Performance. This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of _____, unless sooner terminated pursuant to Section 5.

3. Consideration. In consideration of the provision of the Services by the Contractor and the rights granted to the Commission under this Agreement, the Commission shall pay to Contractor the fees set forth in the Contractor's Proposal. Payment to Contractor of such fees shall constitute payment in full for the performance of the Services, and the Commission shall not be responsible for paying any other fees, costs or expenses.

The Commission agrees to pay all properly-invoiced amounts due to Contractor in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by public entities within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).

4. Insurance Requirements.

A. At all times during the Term of this Agreement, Contractor shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

- i. Commercial General Liability with limits no less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate, including bodily injury and property damage and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Contractor under this Agreement;
 - ii. Worker's Compensation with limits no less than the minimum amount required by applicable law;
 - iii. Commercial Automobile Liability with limits no less than \$1,000,000.00, combined single limit; and
 - iv. Errors and Omissions/Professional Liability with limits no less than \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- B. All insurance policies required pursuant to this Section 4 shall:
- i. be issued by insurance companies that are licensed or hold a Certificate of Authority from the Mississippi Department of Insurance;
 - ii. provide that such insurance carriers give the Commission at least thirty (30) days' prior written notice of cancellation or non-renewal of policy coverage; provided that, prior to such cancellation, Contractor shall have new insurance policies in place that meet the requirements of this Section 4;
 - iii. waive any right of subrogation of the insurers against the Commission;
 - iv. provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of the Commission shall be excess and non-contributory; and
 - v. name the Commission and its Commissioners, officers, employees, agents, and representatives, and Hancock County, Mississippi, as additional insureds.

5. Termination.

- A. The Commission, in its sole discretion, may terminate this Agreement, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to Contractor.
- B. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:
 - i. breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or

- ii. (a) becomes insolvent or admits its inability to pay its debts generally as they become due; (b) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (c) is dissolved or liquidated or takes any corporate action for such purpose; (d) makes a general assignment for the benefit of creditors; or (e) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

C. Upon expiration or termination of this Agreement for any reason:

- i. Contractor shall (i) promptly deliver to the Commission all documents, work product and other materials that are to be delivered to the Commission hereunder or prepared by or on behalf of Contractor in the course of performing the Services, including any items identified as such in Contractor's Proposal ("**Deliverables**") (whether complete or incomplete) for which the Commission has paid, and any documents, data, know-how, methodologies, software and other materials provided to Contractor by the Commission; (ii) promptly remove any equipment, systems, cabling or facilities provided by or on behalf of Contractor and used directly or indirectly in the provision of the Services located at the Commission's premises; (iii) provide reasonable cooperation and assistance to the Commission upon the Commission's written request and at the Commission's expense in transitioning the Services to an alternate contractor; and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Deliverables which have not been provided.
- ii. In no event shall the Commission be liable for any of Contractor's termination costs arising from the expiration or termination of this Agreement.

6. Stop Work Order.

A. *Order to Stop Work:* The Commission may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the Services called for by this Agreement (a "**Stop Work Order**"). This Stop Work Order shall be for a specified period not exceeding ninety (90) days after the Stop Work Order is delivered to Contractor, unless the Parties agree to any further period. Upon receipt of such a Stop Work Order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the Services covered by the Stop Work Order during the period of Services stoppage. Before the Stop Work Order expires, or within any further period to which the Parties shall have agreed, the Commission shall either:

- i. cancel the Stop Work Order; or,

- ii. terminate the Services covered by such Stop Work Order as provided in the Termination clause of this Agreement.

B. *Cancellation or Expiration of the Order:* If a Stop Work Order issued under this clause is canceled at any time during the period specified in the Stop Work Order, or if the period of the Stop Work Order or any extension thereof expires, Contractor shall have the right to resume Services. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and this Agreement shall be modified in writing accordingly, if:

- i. the Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Agreement; and,
- ii. Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of Services stoppage; provided that, if the Commission decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- iii. *Termination of Stopped Work:* If a Stop Work Order is not canceled and the Services covered by such Stop Work Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by adjustment or otherwise.

7. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses:

If to the Commission:	Hancock County Port and Harbor Commission
	Attn: _____
	Address 1: _____
	Address 2: _____
	Phone: _____
	Fax: _____
	Email: _____

If to Contractor:	Name:	_____
	Attn:	_____
	Address 1:	_____
	Address 2:	_____
	Phone:	_____
	Fax:	_____
	Email:	_____

8. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the Commission. Nothing contained herein shall be deemed or construed by the Commission, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the Commission and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Commission or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the Commission and Contractor. Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the Commission. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Commission, and the Commission shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Commission shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Commission shall not provide to Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the Commission for its employees.

9. Indemnification. Contractor shall defend, indemnify and hold harmless the Commission, its Commissioners, officers, employees, agents, and representatives, and Hancock County, Mississippi (each, a “**Commission Indemnitee**”), from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or resulting from bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or negligent acts or omissions of Contractor and/or its partners, principals, agents, employees and/or subcontractors; and Contractor’s breach of any representation, warranty or obligation of Contractor set forth in this Agreement. Contractor shall also defend, indemnify and hold harmless the Commission Indemnitees from and against all Losses based on a claim that any of the Services or deliverables or the Commission’s receipt or use thereof infringes any intellectual property right of a third party. The Commission shall promptly notify Contractor in writing of any third party claim, suit, action or proceeding (each, an “**Action**”) and cooperate with Contractor at Contractor’s sole cost and expense. Contractor shall immediately take control of the defense and investigation of such Action and shall employ counsel of the Commission’s choice to handle and defend the same, at Contractor’s sole cost and expense. Contractor shall not settle any Action in a manner that adversely affects the rights of the Commission without the Commission’s prior written consent. The Commission’s failure to perform any obligations under this Section 9 shall not relieve Contractor of its obligations under

this Section 9 except to the extent that Contractor can demonstrate that it has been materially prejudiced as a result of such failure. The Commission may participate in and observe the proceedings at its own cost and expense.

10. Applicable Law. This agreement is governed by and construed in accordance with the laws of the State of Mississippi. Any action to enforce this agreement must be brought in the Circuit, Chancery, or Justice Court of Hancock County, Mississippi.

11. Availability of Funds. It is expressly understood and agreed that the obligation of the Commission to proceed under this Agreement is conditioned upon the receipt of local, state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Commission, the Commission shall have the right upon ten (10) working days written notice to Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the Commission of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

12. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a contract with the Commission upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

13. Compliance with Laws. Contractor understands that the Commission is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the Contract that the Contractor will strictly adhere to this policy in its provision of services. Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

14. Assignment and Subcontracting. Contractor may not assign, transfer or delegate any or all of its rights or obligations under this Agreement without the prior consent of the Commission. No assignment shall relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance of the foregoing shall be null and void.

15. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor

agrees to maintain records of such compliance. Upon request of the Commission and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform Services hereafter meets the employment eligibility requirements of all immigration laws.

16. Transparency. This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended).

17. Attorneys’ Fees and Expenses. Subject to other terms and conditions of this Agreement, in the event Contractor defaults in any obligations under this Agreement, Contractor shall pay to the Commission all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys’ fees) incurred by the Commission in enforcing this Agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the Commission be obligated to pay any attorneys’ fees or costs of legal action to Contractor.

18. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this Agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

19. Change in the Scope of Work. The Commission may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Agreement. No claims may be made by Contractor that the scope of the project or of Contractor’s Services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Agreement, unless such changes or adjustments have been made by written amendment to the Agreement signed by the Parties. If Contractor believes that any particular Service is not within the scope of this Agreement, is a material change, or will otherwise require more compensation to Contractor, Contractor must immediately notify the Commission in writing of this belief. If the Commission believes that the particular Service is within the scope of the Agreement as written, Contractor will be ordered to and shall continue with the Services as changed and at the cost stated for the Services within the Agreement

20. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that the Commission is a public entity of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended). If a public records request is made for any information provided to the Commission pursuant to this Agreement, the Commission shall promptly notify the disclosing Party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing Party shall promptly institute appropriate legal proceedings to protect its

information. No Party to the Agreement shall be liable to the other Party for disclosures of information required by court order or required by law.

21. Confidential Information. In the event that either Party to this Agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that Party shall promptly inform the other Party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Agreement. The Parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.* (1972, as amended).

22. Contractor's Personnel. The Commission shall, throughout the life of the Agreement, have the right of reasonable rejection and approval of staff or subcontractors assigned to the Services by Contractor. If the Commission reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Commission in a timely manner and at no additional cost to the Commission. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

23. Copyrights. Contractor agrees that the Commission shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this Agreement. Further, Contractor hereby grants to the Commission a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this Agreement, but which is incorporated in the material furnished under the Agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

24. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:

- A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. has not, within a three year period preceding the Effective Date of this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- C. has not, within a three year period preceding the Effective Date of this Agreement, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery,

bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two B) and (C) of this certification; and,
- E. has not, within a three year period preceding the Effective Date of this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

25. Failure to Deliver. In the event of failure of Contractor to deliver Services in accordance with the Agreement terms and conditions, the Commission, after due oral or written notice, may procure the Services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commission may have.

26. Final Payment. Upon satisfactory completion of the Services performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, Contractor shall execute and deliver to the Commission a release of all claims against the Commission arising under, or by virtue of, the Agreement, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this Agreement, by state law, or otherwise expressly agreed to by the Parties in this Agreement, final payment under the Agreement or settlement upon termination of this Agreement shall not constitute waiver of the Commission's claims against Contractor under this Agreement.

27. Force Majeure. Each Party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or Services, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such Party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, hurricanes, tornados, or other natural disasters ("**Force Majeure Events**"). When such a cause arises, Contractor shall notify the Commission immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Commission determines it to be in its best interest to terminate the Agreement.

28. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Commission or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Commission, whichever event occurs first. These records shall be made available during the Term of the Agreement and the subsequent three (3) year period for examination, transcription, and audit by the Commission, its designees, or other authorized bodies.

29. Waiver. No delay or omission by either Party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either Party to this Agreement shall be valid unless set forth in writing by the Party making said waiver. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one Party to this Agreement of a default by the other Party will imply, be construed as or require waiver of future or other defaults.

30. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

31. Entire Agreement. This Agreement, together with Contractor's Proposal, constitutes the sole and entire Agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and Contractor's Proposal, the terms of this Agreement shall control.

32. Amendments. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

33. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

[CONTRACTOR NAME]

Signature

Print Name

**HANCOCK COUNTY PORT &
HARBOR COMMISSION**

Name

Title

EXHIBIT A
CONTRACTOR'S PROPOSAL