
SERVICES AGREEMENT

by and between

PORT OF TEXAS CITY SECURITY COUNCIL, INC.

and

CONTRACTOR

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Exhibits

- A Work Order
- B Port Security Grant Program Compliance Requirements

SERVICES AGREEMENT

THIS SERVICES AGREEMENT is made and entered into this _____ day of _____, 2014, by and between **CONTRACTOR** (“Contractor”) and **PORT OF TEXAS CITY SECURITY COUNCIL, INC.**, a Texas nonprofit corporation (“Council”).

WITNESSETH:

WHEREAS, Council desires that Contractor perform work for the Council as described in the attached Work Order or additional Work Order agreed by both parties.; and

NOW, THEREFORE, in consideration of the mutual and dependent promises contained herein, Council and Contractor agree as follows:

Article I. Defined Terms

1.01 Defined Terms. The following definitions shall for all purposes, unless clearly indicated to the contrary, apply to the capitalized terms used in this Services Agreement:

- (a) **“Affiliate”** means, when used with respect to a specified Person, another Person that directly, indirectly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified.
- (b) **“Agreement”** means this Services Agreement, together with all exhibits attached hereto, as it may be extended, supplemented or restated from time to time in accordance with the provisions hereof.
- (c) **“Business Day”** means any Day except for Saturday, Sunday or a legal holiday, in the State of Texas.
- (d) **“Council”** has the meaning set forth in the introductory paragraph hereof.
- (e) **“Contractor”** has the meaning set forth in the introductory paragraph hereof. The term includes all persons engaged by Contractor to perform work under this agreement including, without limitation, any contract laborers, leased employees or workers furnished to Contractor by a staff leasing agency or company and any subcontractors retained by Contractor to assist it in fulfilling its obligations to the Council.
- (f) **“Day”** means the period of time commencing at 0000 hours on one calendar day and running until 2400 hours on the same calendar day, according to Texas City, Texas, local time.
- (g) **“Effective Date”** means the date set forth in the introductory paragraph hereof.

- (h) **“Event of Force Majeure”** means any event or circumstance that directly or indirectly prevents a Party from performing an obligation under this Agreement and is beyond the reasonable control of, and occurs without the negligence of, the Party obligated to perform the relevant obligation; provided, however, that neither mechanical nor electronic difficulties shall be considered to be an Event of Force Majeure.
- (i) **“Governmental Authority”** means any government, any governmental administration, agency, instrumentality or other instrumentality or other political subdivision thereof or any court, commission or other governmental authority of competent jurisdiction.
- (j) **“Governmental Authorizations”** means all licenses, permits, certificates and other authorizations and approvals of or issued by any Governmental Authority required with respect to either Party hereto, to perform its respective obligations hereunder.
- (k) **“Invitee”** means any Person whose presence in the area of operations is at the invitation of a Party as a guest and not under contract or subcontract with such Party.
- (l) **“Law”** means all constitutions, laws (including common law), treaties, statutes, orders, decrees, rules, injunctions, licenses, permits, approvals, agreements, regulations, codes, and ordinances issued by any Governmental Authority, and including judicial or administrative orders, consents, decrees, and judgments, and all published directives, guidelines, governmental authorizations, requirements or other governmental restrictions which have the force of law, and determinations by, or interpretations of any of the foregoing by any Governmental Authority having jurisdiction over the matter in question and binding on a given Person, whether in effect as of the date hereof or thereafter and, in each case, as amended.
- (m) **“Month”** or **“Monthly”** means a calendar month commencing at 0000 hours on the first Day thereof and running until 2400 hours on the last Day thereof, according to Texas City, Texas, local time.
- (n) **“Notice”** means any notice, request, instruction, correspondence or other communication permitted or required to be given under this Agreement in accordance with Article XIV. hereof, or received from a Person who is not a Party.
- (o) **“Parties”** means Council and Contractor, collectively.
- (p) **“Party”** means Council or Contractor, individually.
- (q) **“Person”** means, without limitation, an individual, corporation (including a non-

profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body, and shall include any successor (by merger or otherwise) of such entity.

- (r) **“Taxes”** means any income, sales, use, excise, transfer, and similar taxes, fees and charges (including ad valorem taxes), including any interest or penalties attributable thereto, imposed by any Governmental Authority.

1.02 Other Defined Terms. Other terms may be defined elsewhere in this Agreement, and, unless otherwise indicated, shall have such meanings throughout this Agreement.

1.03 Terms Generally. The definitions in this Agreement shall apply equally to both singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” All references herein to Articles, Sections and exhibits shall be deemed references to Articles and Sections of, and exhibits to, this Agreement unless the context shall otherwise require.

Article II.

Performance of the Work

2.01 Performance of Work. Contractor shall perform certain Work and/or provide certain items of equipment, machinery, materials or supplies as described on the Work Order attached hereto or subsequent Work Orders executed by Contractor and the Council Exhibit A the “Work”.

2.02 Manner of Performance. Contractor shall diligently perform all Work in a skillful and workmanlike manner and in accordance with the latest recognized industry standards, practices and principles applicable thereto. Except as otherwise specifically agreed, Contractor shall provide all labor and skills, and all tools, equipment, machinery, materials and supplies necessary for the performance of such Work. Title to all Work, including all studies, designs, specifications and data, shall belong to Council.

2.03 Governmental Authorizations. Contractor, at its sole cost and expense, and in its name, shall obtain all necessary Governmental Authorizations necessary to perform and provide Work hereunder and shall meet all applicable Federal Government Grant Compliance Requirements in Exhibit B.

Article III.

Term and Termination

3.01 Term. This Agreement shall commence on the Effective Date, and, unless terminated pursuant to Section 3.02, shall terminate for each Work Order upon Council’s written final acceptance of the fully completed Work.

- 3.02 Termination.** Council shall have the absolute right to terminate this Agreement immediately upon Notice, with or without cause and for any reason, at any time prior to completion of the Services by Contractor, by giving Notice of such termination to Contractor. Upon receipt of such Notice of termination, Contractor shall stop performance of the Services except as may be necessary to carry out such Notice of termination. Contractor shall take any other action toward termination that Council may direct. If Council terminates this Agreement without cause, Council shall owe Contractor only the compensation earned for Services satisfactorily performed by Contractor to the time of Notice of termination and the costs of all materials procured by Contractor for the Work. If Council terminates this Agreement for cause, as hereinafter defined, Council shall owe Contractor only the compensation earned for Services satisfactorily performed by Contractor to the time of Notice of termination, less any costs and expenses incurred by Council by reason of such termination, including additional costs incurred by having to retain a replacement contractor to complete the Services. As used in this Section 3.02, the term “cause” shall mean: (a) unsatisfactory performance or non-performance of the Services by Contractor; (b) a material breach by Contractor of this Agreement; or (c) the insolvency, bankruptcy or receivership of Contractor.
- 3.03 Delivery of Work Materials.** Upon receipt of Notice of termination, Contractor shall immediately deliver to Council all materials held or used by Contractor in connection with the Work, except those materials, if any, owned by Contractor or supplied by Contractor at Contractor’s own cost. If, at the time of termination, further sums are due to Contractor hereunder, Contractor shall not be entitled to the same until all materials required to be delivered to Council are delivered to Council.
- 3.04 Effect of Termination.** Upon termination, neither Party shall have any further obligations to the other Party under this Agreement, except that the liabilities accrued through the date of termination and the obligations which by their terms survive termination, including, without limitation, indemnification and records and audit obligations of this Agreement, shall survive termination.

**Article IV.
Independent Contractor Relationship**

- 4.01 Independent Contractor Relationship.** Contractor shall perform all Work as an independent contractor. Neither Contractor nor its agents or employees shall be the agents or employees of Council.
- 4.02 Direction and Control.** Contractor shall be fully responsible for and shall have exclusive direction and control of its agents, employees and Subcontractors and shall control the manner and method of performing all Work. All Persons engaged by Contractor to perform Work under this Agreement (including, without limitation, any contract laborers, leased employees or workers furnished by Contractor by a staff leasing agency or company) shall be deemed to be employees, and not subcontractors, of

Contractor for all purposes. Any provision in any Work Order planning form, or other contract between the Parties whereby Council or any of its agents or employees would otherwise have the right to direct Contractor or its agents or employees as to the manner of performing Work shall be interpreted as meaning that Contractor should follow the wishes of Council in the results to be achieved and not in the means whereby the Work is to be accomplished. However, if Council shall request Contractor to remove one of its agents, employees or subcontractors for any valid reason, including, but not limited to, lack of competence or conduct which interferes with Council's operations, Contractor shall promptly cause such agent, employee or subcontractor to be replaced at no cost to Council; provided, however, Contractor retains the sole right to select and discharge its employees, subcontractors and agents.

- 4.03 Personnel.** Contractor shall employ and have supervision over such Persons as Contractor deems necessary and appropriate in order to permit Contractor to perform its duties and responsibilities hereunder. All such Persons shall be employees of Contractor, shall be suitably qualified and experienced to perform the Services, and shall perform the Services in accordance with the terms of this Agreement.

Article V. Work Safety and Security

- 5.01 No Interference with Railroad or Other Operations.** The Work and any other activities or operations performed by Contractor under this Agreement shall not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Port of Texas City. Contractor shall not conduct the Work, or any activities or operations, in a manner that would impair the safety of the Council. Further, when not in use and when otherwise permitted by this Agreement, Contractor's machinery, equipment and materials shall not be kept or stored within fifty feet (50') from the centerline of the nearest track or the edge of the nearest roadway without Council's consent.
- 5.02. Compliance with the Law and Safety Provisions.** Contractor shall secure all necessary permits and shall strictly comply with all applicable valid federal, state and local laws, governmental regulations, municipal ordinances, administrative rules and regulations, as now or hereafter may be promulgated (including all federal and state environmental laws and regulations, occupational safety and health acts and regulations, laws and regulations relating to pipelines and all Railroad Administration regulations). The Work and any other activity or operation of Contractor under this Agreement shall be performed in a good and workmanlike manner, shall meet proper engineering standards and practices, and shall be performed in compliance with applicable safety standards. Contractor shall promptly notify Council of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the Work, or any other activity or operation performed by Contractor under this Agreement. Contractor shall have a non-delegable duty to control its employees while performing work under this Agreement, and to be certain they do not use, be under the influence of, or have in their possession, any alcoholic beverage, drug, narcotic, or any other substance that may

inhibit the safe performance of the Work by the employee. Contractor also agrees that:

- (a) Contractor will take all actions and implement protections reasonably necessary to ensure that the Work, or any other activity or operation of Contractor under this Agreement, and equipment, materials and substances generated, pose no threat to the safety or health of persons or the environment, and cause no injuries to persons or damage to property (real or personal) of the Council.
- (b) All equipment, pipe and other materials shall be placed, stored and operated in such manner as to be clear of all railroad tracks and service roadways in the Port of Texas City. No railroad track in the Port of Texas City shall be blocked or have proper clearance impaired at any time. Minimum clearance of railroad tracks must be fifteen feet (15') measured on a perpendicular line from the centerline of nearest railroad track.
- (c) When crossing pipelines on the Port of Texas City and prior to the Work, Contractor shall ascertain the exact location of any pipelines in the area of the Work by conference with the respective owners thereof and any other necessary means. Contractor shall take all other actions necessary to ensure that its activities and operations do not contact, damage or rupture any pipeline.
- (d) Contractor shall use only so much of the surface of the Port of Texas City as is reasonably necessary to perform the Work.
- (e) All open excavations shall be barricaded. There shall be no such excavation within fifteen feet (15') of any railroad track centerline or ten feet (10') from the edge of any roadway, measured horizontally. All reasonable precautions shall be taken to fence, or otherwise properly secure, all excavating, digging, drilling, testing and other work areas at all times.
- (f) If the Work is to be conducted in waterfront areas and upon dock facilities, Contractor shall carefully coordinate the timing and location of the Work with Council.

Contractor understands and agrees that the above specifications are only general minimum specifications, and that the Work may require additional or more specific specifications and that Contractor is not and shall not rely on the above specifications as being sufficient to meet all governmental requirements or safety or industrial standards. In addition to the releases contained in this Agreement, Contractor also RELEASES AND DISCHARGES Council from any liability or claims relating to Council's review, comment or approval of Contractor's operations or activities related to this Agreement.

5.03 Security. Contractor is solely responsible for the security and safety of its Work site, its employees, contractors and subcontractors, including security from acts of terrorism, vandalism, theft, burglary or other criminal acts; notwithstanding any security measures that might be taken or undertaken by Council.

5.04 Port Access Issues. Contractor understands that the area it will be working in or near is a secure or restricted area (as those terms are defined in 33 C.F.R. § 101.105). Contractor understands that, whenever it is necessary for it (or any of its representatives or subcontractors) to enter a secure or restricted area, it shall at all times maintain with the Council's Security Operations Center a list of Contractor personnel who are authorized by Contractor to enter the secure or restricted area. Contractor is responsible for all such personnel while in the restricted or secure area. Further, Contractor understands, and will comply with, all port identification and access requirements including, but not limited to, the terms of the Council's "Agreement for Entry on the Premises of the Port of Texas City" and "POTC Security Council, Inc. TWIC Escorting Procedures." The terms of both documents and any related succeeding documents are expressly incorporated herein. Further, Contractor understands and warrants that, in the event it (or any of its representatives or subcontractors) receives, or causes Council to receive, a civil or criminal penalty for failure to comply with any of the provisions of 33 C.F.R. Chapter 1, Subchapter H (Maritime Security) it will be liable for the penalty, notwithstanding the provisions of the Risk Structure and Indemnity provisions set forth in Article X of this Agreement.

**Article VI.
Inspections and Tests**

6.01 Examinations, Inspections and Tests. Council may make inspections and tests to determine that all Work is being properly performed. Such examinations, inspections and tests may be conducted at any reasonable time at any mutually convenient place, including the plant or yard of Contractor or any of its subcontractors, and Contractor shall give every assistance in carrying out such examinations, inspections and tests. If requested by Council, Contractor shall provide Council with test reports and material certificates. Contractor shall, upon request, furnish copies of any license, permit, bond, report, certificate, or other document maintained, compiled, or required by any Governmental Authority for performance of Work hereunder. Any inspection or lack of inspection by Council shall not in any manner relieve Contractor of any of its obligations hereunder.

**Article VII.
Warranty**

7.01 Warranty. Contractor warrants and represents that it shall (i) perform the Work with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii) use sound engineering and/or technical principles where applicable; (iii) perform Work in compliance with specifications provided or approved by Council; (iv) use or furnish materials and equipment that are merchantable, fit, and new; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Contractor or its subcontractors shall be passed directly to Council. Council shall also have the rights and remedies provided by the Uniform Commercial Code. At

no cost to Council, Contractor shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming Work, and reinstallation of such facilities removed in connection therewith. If Contractor does not remedy nonconforming Work immediately, Council may do so at Contractor's expense. If Contractor fails to pay this expense, Council may deduct all expenses from any proceeds due to Contractor. At no cost to Council, Contractor shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time as provided by manufacturer's warranty; provided, however, with respect to latent defects in equipment and material installed by Contractor hereunder such period shall be within such time as Council discovers or should have discovered such latent defects under the circumstances but in no event less than four (4) years from installation, within such longer period of time as provided by manufacturer's warranty.

Article VIII. Compensation, Invoicing and Payment

8.01 Lump Sum or Fixed Rate Basis Work.

- (a) Compensation. For satisfactorily performing Work on a lump sum or fixed rate basis, Contractor shall be compensated as provided in the Work Order.
- (b) Invoicing. Contractor's invoicing for Work performed on a lump sum or fixed rate basis shall be as provided in each Work Order. All invoices for services provided shall be delivered to the Council within thirty (30) calendar days of the date that work is completed. Council reserves the right to not honor charges submitted after the specified time period.

8.02 Payment of Invoices. Within thirty (30) calendar days' of receipt of each invoice, together with all required supporting documentation, Council shall pay, or cause to be paid, the approved amount of Contractor's invoice.

8.03 Disputed Invoices. If Council disputes any invoice, in whole or in part, Council shall promptly notify Contractor of the dispute and shall pay only the undisputed portion.

8.04 Right of Set-Off. Council may off-set against payments due to Contractor any amount(s) due and owing to Council by Contractor for any reason.

8.05 Contractor-Procured Equipment. Should Contractor procure for Council any equipment, machinery, materials or supplies under the terms of any contract, Council agrees to pay the actual cost of such items, less any cash discounts thereon to which Contractor may be entitled. Contractor agrees to furnish Council with copies of suppliers', vendors', or other third Persons' invoices covering such items.

8.06 **Payments.** Any payment made by Council shall not prevent Council from filing claims or prejudice its right to recover any amount of such claim however they may have arisen. Without limiting the type or nature of the claims mentioned in the preceding sentence, Council may recover any sums paid to Contractor by mistake of Law or of fact. Payment shall not be construed as acceptance or evidence of approval of Work.

Article IX.
Liens and Claims

9.01 **Liens and Claims.** Contractor shall indemnify and hold Council harmless from all liens on account of debts or claims alleged to be due from Contractor or its subcontractors to any Person, including subcontractors, and on behalf of Council and in Council's name, shall defend at its own expense any claim or litigation in connection therewith.

9.02 **Council's Right to Withhold Payments.** Council shall have the right to withhold from payments due to Contractor reasonable amounts to cover probable lienable and non-lienable claims which may be made against Council, or against Contractor or its subcontractors by third Persons, and Council shall have the right to make reasonable settlement of such claims. In addition to the other rights set forth herein, Council reserves the right to require contractor to submit a Statement of Lienable Claims prior to release of final payment for Work under any contract or Work Order. If any liens or other encumbrances are filed against Council on account of debts or claims alleged due from Contractor or its subcontractors to any Person, Contractor shall not later than seven (7) Days after such filing either pay the amount of the lien and cause the lien to be released of record, or diligently contest such lien and deliver to Council a bond or other security reasonably satisfactory to Council.

Article X.
Risk Structure and Indemnity

10.01 Subject only to the proportionate responsibility and liability allocation provisions set forth in Subsection 10.02 and in supplement and addition to any other indemnity or release provided by this Agreement, Contractor hereby agrees to **INDEMNIFY, DEFEND** (upon Council's request), and **HOLD HARMLESS** Council, as well as Council's parent entities, subsidiaries, affiliates and members, including the officers, directors, employees, agents, and representatives of each of them (collectively, the "Council Parties") from and against all claims, lawsuits, actions, proceedings, losses, costs, damages (including, but not limited to, consequential damages), injuries, assessments, fines, penalties, liens, reasonable and necessary attorneys' fees, consulting experts' fees and expenses and court costs, or awards of any kind or nature whatsoever, including any loss of or damage to Council's real or personal property or its business operations (regardless of whether a third party asserts a claim), and the loss of or damage to any property, or injury to or death of any person, asserted by any person, firm, governmental agency or corporation whomsoever (including, without limitation, Contractor, its employees, invitees, contractors and sub-contractors or their employees and Council's employees, invitees and tenants, contractors, sub-contractors and their

employees, including survivors claiming under the wrongful death statute) that relate to, arise out of, or are otherwise connected with the Work or any other activity or operation under this Agreement by or on behalf of Contractor, entry, or the escape, release, migration, explosion, burning, inhalation of, or exposure to any substance, including Foreign Substances that was caused directly or indirectly by Contractor, irrespective of any of the above circumstances whether such Liabilities, property loss or damage, personal injury, or death occurs while performing the Work under this Agreement or such circumstances occur after the Term of this Agreement (collectively, “Liabilities” and/or “Liability”). **Subject to Subsection 10.02, the term Liabilities or Liability shall include Liabilities arising from the Council Parties’ own past, present or future negligence or strict liability, including Liabilities under CERCLA, RCRA, the Texas Water Code or Health and Safety Code or any other state or federal strict liability law or regulation.**

- 10.02** If either (i) an agreement between the Council and Contractor (or their respective insurers) is reached, or (ii) a final, non-appealable judgment or order is issued by a judicial, regulatory, or arbitral body or authority with proper jurisdiction over the subject matter in question is rendered, holding that Council was negligent for a Liability, the indemnity obligations of Contractor under Subsection 10.01 and the release obligations of Contractor under Subsection 10.03 shall be limited to the remaining percentage(s) of the Liability not attributable to Council’s negligence.
- 10.03** Subject only to the proportionate responsibility and liability allocation provisions set forth in Subsection 10.02, Contractor hereby **RELEASES** the Council Parties from and **ASSUMES FOR ITSELF** all liabilities. Contractor hereby further **RELEASES** the Council Parties from and **ASSUMES FOR ITSELF** all liabilities and other claims, causes of actions, losses, costs, damages (including, but not limited to, consequential damages) or injuries, which are caused by, arise out of or in connection with, or are related to any lapse in or failure to provide security by Council or other persons, acts of terrorism, vandalism, theft, burglary or other criminal acts, war, acts of God, fire, explosion or flood.
- 10.04** Contractor shall have thirty (30) days after receipt of notice of possible Liabilities to assume and control the defense of such liabilities at its expense. Any delay in providing notice or tendering the defense of such liabilities shall not affect or limit the Council Parties’ rights of indemnity under this Agreement. Counsel selected by Contractor pursuant to this Section shall be subject to the approval (such approval not to be unreasonably withheld, delayed, or conditioned) of Council. However, Council may elect to defend any possible Liabilities if Council in good faith determines that there is a conflict of interest (or a reasonable likelihood for a conflict of interest) between any of the parties involved in the Liabilities (*e.g.*, if the respective negligence of the parties hereto is at issue). Under such circumstances, Council may elect to defend any such Liabilities on its own behalf or the Council Parties’ behalf. Likewise, if Contractor elects not to defend against any such Liabilities on behalf of the Council Parties, then it shall promptly so notify Council and, in such event, Council shall thereupon be entitled, at its option, to assume and control the defense of such Liabilities through counsel of its

choice. In the event that either Contractor does not elect to conduct the defense or that Council chooses to control its own defense as provided herein, within sixty (60) days of receiving a request for payment or reimbursement, Contractor shall pay the reasonable costs and expenses of such defense, including attorneys' fees, if and to the extent required under this Agreement, and shall reasonably cooperate with Council in such defense. Notwithstanding anything in this Agreement, if Council is not controlling the defense of Liabilities, the Council may participate in such defense with counsel of its choice at its own expense. Contractor may not settle any Liabilities being defended on behalf of Council without the prior written consent of Council, such consent not to be unreasonably withheld, delayed, or conditioned.

10.05 This Article shall survive the termination, cancellation or expiration of the Term of this Agreement.

Article XI. Insurance

11.01 Insurance. In addition to and without limiting any warranty, indemnity, and insurance obligation contained elsewhere in this Agreement, Contractor represents, covenants and warrants that it and any contractor, subcontractor or consultant or other person retained by or on behalf of Contractor to perform work or activities under this Agreement:

- (a) maintain workers' compensation insurance with a limit of at least \$1,000,000 in accordance with applicable laws;
- (b) maintain appropriate general liability insurance to cover liabilities that could occur in connection with Work or any other activity or operation to be performed under this Agreement of a type and amount reasonably available and reasonably acceptable to Council, with limits of at least \$1,000,000 per occurrence and \$2,000,000 in general aggregate, or an amount for which Contractor is insured as an additional insured, whichever amount is greater (but not less than the limits that are otherwise then customarily and regularly being maintained by such persons or entities); and,
- (c) if working at or near docks or on the water, carry USL&H (U.S. Longshoremen and Harborworkers' Act) insurance and insurance covering liability under the Jones Act, Death on the High Seas Act, and General Maritime Law with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in general aggregate, or an amount for which Contractor is insured as an additional insured, whichever amount is greater (but not less than the limits that are otherwise then customarily and regularly being maintained by such persons or entities).

Contractors shall ensure (a) that such applicable policies will also name Council as an additional insured on its policies and waive all subrogation against Council; (b) provide appropriate documentation of this coverage and additional insured status to Council prior to initiating work pursuant to this Agreement; and (c) ensure that the applicable policies

shall not be canceled, materially changed or have coverage reduced without thirty (30) days prior written notice to Council.

11.02 Subcontractors. Contractor shall cause each of its subcontractors to carry insurance of types and amounts necessary to cover risks in the Work of that subcontractor, with such insurance to provide primary coverage to Council and its employees as additional insureds for all liability and operations related to such subcontractor's Work and waiving for the benefit of Council any right of subrogation for Claims against Council and Council's employees. When requested by Council, Contractor shall furnish Council certificates of insurance evidencing coverage for each subcontractor.

11.03 Deductibles. Contractor shall be responsible for all deductibles under the required policies of insurance. Council may permit self-insurance by prior written approval; provided, however, Council shall have the sole and exclusive right to accept or deny Contractor's request to self-insure.

Article XII. Force Majeure

12.01 Event of Force Majeure. In the event either Party is prevented from performing any of its obligations under any contract by an Event of Force Majeure, that Party's obligations with respect to that contract shall be suspended during the period of such Event of Force Majeure.

12.02 Notice. The Party which is prevented from performing by an Event of Force Majeure shall provide a Notice to the other Party immediately of its inability to meet its obligations under the given contract, specifying the cause of the Event of Force Majeure and estimated extent to which the event or condition will impact performance, and shall advise the other Party when such difficulty ceases. The Party claiming an Event of Force Majeure shall act diligently to remove or remedy such condition (but shall not be required to settle any labor dispute on unfavorable terms). If Contractor fails to give such Notice to Council within forty-eight (48) hours of the occurrence of the Event of Force Majeure, Contractor may not claim an Event of Force Majeure as a defense hereunder.

12.03 Termination Due to Event of Force Majeure. When any Work contracted for is halted by reason of an Event of Force Majeure, Council may terminate the given contract immediately upon Notice. In such case, Council shall owe Contractor only the compensation earned to time of Notice plus any demobilization fee provided for in such contract.

Article XIII. Taxes

13.01 Taxes. Contractor shall be responsible for and shall pay all Taxes which may be assessed or levied directly or indirectly against Contractor by any Governmental Authority as a result of Contractor's performance of Services hereunder.

**Article XIV.
Notices**

14.01 Notices. Unless otherwise specifically provided herein, all Notices provided for in this Agreement or any contract hereunder shall be made in writing and shall be effective upon receipt. Such Notices shall be given either: (i) by hand delivery to an authorized representative of the Party to whom directed, or (ii) by United States mail, postage prepaid, or (iii) by courier service guaranteeing delivery within two (2) Days or less, charges prepaid, or (iv) by facsimile to the address of the Party as designated in any contract hereunder for matters relating to any specific Work under that contract or to the following addresses for matters relating to this Agreement:

Council: Port of Texas City Security Council, Inc.
PO Box 1887
Texas City, Texas 77592-1887
Attn: James Whitehead
Telephone: (409) 949-9437
Email: jwhitehead@ptcsc.org

Contractor: CONTRACTOR

Telephone: _____
Email: _____

14.02 Effectiveness. Any Notice, other than an Event of Force Majeure Notice under Article XII., delivered after Normal Business Hours at the receiving Party's place of business shall not be deemed delivered until the receiving Party's following Business Day. Either Party may at any time change its address, facsimile number or attention receipt upon Notice to the other Party.

**Article XV.
Applicable Law**

15.01 Applicable Law and Venue. Venue of any dispute or lawsuit between the parties shall be in either Texas State Judicial District Court in Galveston County, Texas, or in the United States District Court for the Southern District of Texas. This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the laws of the State of Texas, excluding any principle of conflict of laws that would require application of the laws of any other jurisdiction. This Agreement shall not be construed against any party; and any rule of contract construction or interpretation providing for an interpretation or construction against any party shall not apply.

Article XVI.
Miscellaneous

16.01 Records and Audit. Contractor shall, and shall ensure that its subcontractors shall, maintain, a true and correct set of records pertaining to all activities relating to its performance of this Agreement and all transactions related thereto. Contractor further agrees, and shall ensure that its subcontractors agree, to retain all such records for a period of time not less than four (4) years after completion of performance under this Agreement. Council, or any representative or representatives authorized by Council, may audit, copy and inspect all such records of Contractor and its subcontractors at any reasonable time or times during Contractor's Normal Business Hours during the term of this Agreement and during the four (4) year period after completion of performance under this Agreement. Contractor shall cooperate fully with Council during the audits performed hereunder, including furnishing Council with copies of all requested documents. Council shall have the right to also obtain statements from Contractor's personnel in the course of such audits.

16.02 Assignments; Subcontracts. This Agreement and each contract hereunder shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns; provided, however, Contractor shall not assign or subcontract the whole or any part of this Agreement or any contract hereunder without Council's prior written consent, which consent shall not be unreasonably withheld. Council's consent to any such assignment or subcontract shall not relieve Contractor of any liability for full and complete performance of this Agreement or any contract hereunder, or be deemed to create a contractual relationship between Council and the subcontracting party or assignee.

16.03 Compliance with Laws and Environmental Cleanup.

(a) **Laws.** Contractor and its subcontractors shall at all times comply with all Laws applicable to Work performed under any contract hereunder. Contractor shall indemnify Council and its Affiliates for any fine, penalty or liability and for costs related thereto, including, without limitation, court costs and attorney's fees, arising out of any failure of Contractor and its subcontractors to comply with any Law.

(b) **Restoring Premises.** Following the completion of the Work or upon the expiration of the Term of this Agreement, Contractor shall, at its own cost, remediate any property damage (including any excavation, unsafe or unsightly condition, construction material or debris and any hazardous materials, petroleum products or other Foreign Substances (as defined below) caused by the Work of Contractor (the "Restoration Work"). The Restoration Work includes, but is not limited to, the remediation, clean-up and removal of Foreign Substances provided below. If Contractor fails to perform or complete the Restoration Work, Council may (at its option) conduct the Restoration Work and Contractor hereby agrees to

reimburse Council for its cost and expense in conducting such Restoration Work. In such event, Contractor waives any challenge to the cost, expense or the extent of the Removal Work conducted by Terminal. No state or federal statute of limitation or other time bar limitation shall apply to Contractor's obligations under this Section and Contractor hereby waives the same. This Section shall survive the termination, cancellation or expiration of the Term of this Agreement.

- (c) **ENVIRONMENTAL CONDITION AND CLEAN-UP.** Contractor hereby warrants that it shall conduct the Work, Restoration Work and any other operations and activities under this Agreement in such a manner as to prevent the escape, release or discharge of any hazardous material, petroleum product or other foreign substance or material (collectively "Foreign Substances") onto the surface, or into the subsurface, or in or onto any of the waters in, on or abutting the Port of Texas City. In the event of any escape, release or discharge caused by the Work or any other operation or activity of Contractor under this Agreement, irrespective of the ownership of such Foreign Substance, Contractor hereby agrees that it shall, at no cost or expense to Council: (i) promptly report any such escape, release or discharge to Council and to the appropriate local, state and/or federal environmental authorities, if required by applicable regulation or law; (ii) shall promptly remediate, clean-up and remove such Foreign Substance; and (iii) make lawful disposal of such Foreign Substance and all materials impacted by such Foreign Substance in the name of Contractor and in full compliance with all statutes and governmental rules and regulations applicable thereto. No state or federal statute of limitation or other time bar limitation shall apply to Contractor's obligation under this Section and Contractor hereby waives the same. This Section shall survive the termination, cancellation or expiration of the Term of this Agreement.

16.04 Material Breach. In the event that either Party commits any material breach of this Agreement, including, without limitation, any breach of any indemnity obligation, in addition to any other remedy that the aggrieved Party may have at Law or in equity, it shall be entitled to recover all costs, including court costs and attorney's fees, incurred in any proceeding wherein the aggrieved Party seeks redress for such breach.

16.05 Adjustment. It is intended that if any provision of this Agreement is unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties. In any event, all other provisions of this Agreement shall be deemed valid, binding and still enforceable.

16.06 Non-Waiver. The failure of either Party to enforce any provision, condition, covenant or requirement of this Agreement at any time shall not be construed to be a waiver of such provision, condition, covenant or requirement unless so notified by such Party in writing. No waiver by either Party of any default by the other Party in the performance of any provision, condition, covenant or requirement contained herein shall be deemed to be a waiver or in any manner release such other Party from performance of any other

provision, condition, covenant or requirement herein contained, nor be deemed to be a waiver of the same provision, condition, covenant or requirement.

16.07 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. Except for any secrecy or other non-disclosure agreements between the Parties, all other oral or written agreements, contracts, understandings, conditions, or representations with respect to the subject matter of this Agreement are superseded by this Agreement. General or special conditions of any of Contractor’s price lists, invoices, tickets, receipts, or other documents presented to Council relating to Work hereunder are null and void, regardless of whether signed by an employee of Council.

16.08 Amendments. This Agreement shall not be modified or amended, in whole or in part, except by a supplemental agreement signed by both Parties.

16.09 Counterparts; Multiple Originals. This Agreement may be executed in any number of counterparts, all of which together shall constitute one agreement binding on each of the Parties. Each of the Parties may sign any number of copies of this Agreement. Each signed copy shall be an original, but all of them together shall represent the same agreement.

16.10 Headings. The Article and Section headings used in this Agreement have been inserted only for convenience to facilitate reference and they shall not be determinative in construing the meaning, interpretation or application of any Article, Section or provision hereof.

16.11 Exhibits. The exhibits referred to herein are attached hereto and by this reference are incorporated herein and made a part hereof. In the event there is any conflict between this Agreement and an exhibit, the provisions of this Agreement shall be deemed controlling.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date first set forth above.

CONTRACTOR
 (“Contractor”)

**PORT OF TEXAS CITY
SECURITY COUNCIL, INC.**
 (“Council”)

By: _____

By: _____

Name: _____

Name: Shane Long

Title: _____

Title: Chairman

**Exhibit A
Work Order**

Port of Texas City Security Council, Inc.
PO Box 1887
Texas City, Texas 77592-1887

It is hereby agreed that Contractor, **CONTRACTOR**, will, as an independent contractor, at its sole cost, risk and expense, perform the following described work in accordance with the terms and conditions as set forth in the Service Agreement between the parties and Contractor's quote (or insert the following in place of Contractor's quote: and the following documents which are incorporated as attachments to the Service Agreement and this Work Order):

To the extent there are conflicts between the Service Agreement, this Work Order and the documents attached to this Work Order the order of precedence for resolving conflicts shall be the Service Agreement prevails over the Work Order and the documents attached to the Work Order.

All correspondence, including invoices, related to this Order shall be deemed to have been given only if and when received in writing by the respective parties' representatives designated below:

Council:	Port of Texas City Security Council, Inc.	Contractor:	CONTRACTOR
Representative:	James Whitehead	Representative:	_____
Telephone:	409-949-9437	Telephone:	_____
Email:	jwhitehead@ptcsc.org	Email:	_____
Address:	PO Box 1887	Address:	_____
	Texas City, Texas 77592-1887		_____

**PORT OF TEXAS CITY
SECURITY COUNCIL, INC.**
("Council")

CONTRACTOR
("Contractor")

By: _____
Name: Shane Long
Title: Chairman
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Federal Tax ID: _____
State Tax ID: _____
State License: _____

Exhibit B
Port Security Grant Program Compliance Requirements

Since a portion of the funds for this project come from a Port Security Grant Program administered by the Federal Emergency Management Agency of the Department of Homeland Security the following terms and conditions will be incorporated into and form part of the contract between the Port of Texas City Security Council (“Council”), the recipient of grant funds under the PSGP and _____ (“Contractor”). The terms hereof supersede any conflicting terms in the Standard Form Agreement, General Conditions or any of the other materials contained in the project bid documents.

Event of Default/ Termination for Cause: Failure to comply with the terms of the Contract or the provisions set forth in this Addendum shall constitute an event of default under the Contract and the Council may terminate this Contract upon thirty (30) days prior written notice if the default remains uncured five (5) calendar days following the termination of the thirty (30) day notice period. This remedy will be in addition to any other remedy available under the laws of the State of Texas.

Buy American Act: The Contractor must follow the standards identified in the Buy American Act, 41 U.S.C. 10a -10d. The Buy American Act requires that all supplies and construction materials purchased be produced in the United States, unless such materials are not reasonably available, or such a purchase would not be in the public interest. Contractor must follow the Federal Acquisition Regulations implementing the Buy American Act, 48 C.F.R. Part 25.

Equal Employment Opportunity: Contractor agrees to comply with the regulations contained in 41 CFR Part 60-1.4(b) in accordance with Executive Order 11246 “Equal Employment Opportunity” as amended by Executive Order 11375 “Amending Executive Order 11246 relating to Equal Employment Opportunity” and implementing regulations at 41 CFR Part 60 “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the

said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7): For all construction contracts (as defined in 29 CFR 5.2), the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The Contractor expressly acknowledges that the award of this contract is conditioned upon the acceptance of the current prevailing wage determination issued by the Department of Labor.

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c): The Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction,

completion, or repair of public works, to give up any part of the compensation to which he is otherwise entitled.

Contract Work Hours and Safety Standards Act (40 USC 3701 - 3708): The Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor Regulations (29 CFR Part 5). The Contractor agrees to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions: The Contractor agrees that any contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Council in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by Department of Homeland Security.

Clean Air Act And Federal Water Pollution Control Act: Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Texas Commission on Environmental Quality, the regional office of the Environmental Protection Agency and/or the United States Coast Guard, as appropriate. The Council shall also be notified of all violations but notifying the Council does not relieve the Contractor of its obligation to make the appropriate agency notifications.

Energy Efficiency: The Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State of Texas energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

Debarment and Suspension: Contractor shall make no contract or subcontract to any party listed on the U.S. government wide Excluded Parties List System in the System for Award Management (SAM) in accordance with Executive Orders 12549 and 12689 "Debarment and Suspension."

Byrd Anti-Lobbying Amendment: Contractor certifies that it, and all of its sub-Contractors, will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall further disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosure shall be forwarded to the Council.

Right of Entry Agreement. Land in the immediate vicinity of the project area is owned by the

Texas City Terminal Railway (doing business as the Port of Texas City). In the event Contractor decides to use any of the land (e.g., as a staging or lay down area) the Contractor will first be required to sign a right of entry agreement with the Port of Texas City.

Access to Records. The Council, FEMA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcripts.