
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 _____, 2021, 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 3.03, shall continue for an initial term until (Month, Day, Year), unless earlier terminated in accordance with the terms hereof. Unless written notice of an election to terminate this Agreement is delivered by either Contractor or Client to the other

party at least thirty (30) days prior to the end of the initial term, this Agreement shall automatically renew for an extension term, commencing on the date immediately following the expiration of the initial term and continuing for a twelve (12) month period thereafter. Similarly, upon the expiration of any extension period, this Agreement shall automatically renew and extend for an additional twelve (12) month extension, unless either party hereto elects to terminate this Agreement by delivering written notice to the other party at least thirty (30) days prior to the end of such current extension period. All extensions shall be upon the same terms and conditions as are in effect as of the expiration of the initial term or extension period, as the case may be, just expired. A maximum of three (3) extension periods may occur in accordance with the foregoing. Upon the expiration of the third such extension, this Agreement shall terminate for all purposes unless Contractor and Client agree to the contrary.

3.02 **Contract Ceiling Price.** The Contract Ceiling Price for this Agreement is \$ XXX,XXX. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Council may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Council under this Agreement exceed the Contract Ceiling Price. The Contractor shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the Council, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the Contract Ceiling Price.

3.03 **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 3.03, 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.

3.04 **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.

- 3.05 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 Port 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 railroad tracks, property and facilities

within 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 and its member facilities. 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. 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 "Facility Security Training & User Agreement" and "TWIC Escort Permit." 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 or within thirty (30) calendar days of the end of the month if monthly billing is agreed upon between the Council and Contractor. 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 Off-Set. 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, plus any agreed upon mark-up, 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 or Brandi Flisowski
Telephone: (409) 949-9437
Email: jwhitehead@ptcsc.org or bflisowski@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: Vernon Chinn

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 the following documents which are incorporated as attachments to the Service Agreement and this Work Order:

1. Port of Texas City Security Council's Request for Proposal: (RFP Title), dated Month, Day, Year
2. Contractor's Proposal and Price Quote dated Month, Day, Year

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: Vernon Chinn
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, as applicable, will be incorporated into and form part of the contract between the Port of Texas City Security Council (“the Council”), the recipient of grant funds under the PSGP and (CONTRACTOR NAME) (“Contractor”). The terms hereof supersede any conflicting terms in the Agreement of Services or any of the other materials contained in the project bid documents or Contractor’s proposal.

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.

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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge,

in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) 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.

(5) 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. (6) 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 their 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.

(7) 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by

the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”): For all prime construction contracts (as defined in 29 CFR 5.2) in excess of \$2,000. Compliance with the Davis-Bacon Act:

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are 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.
- c. Additionally, contractors are required to pay wages not less than once a week.

Copeland "Anti-Kickback" Act (40 U.S.C. 3145), 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”): This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. Compliance with the Copeland “Anti-Kickback” Act:

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708): Applicable to all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers. Compliance with the Contract Work Hours and Safety Standards Act:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the

contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Rights to Inventions: Applies to any “funding agreement” (any contract, grant, or cooperative agreement entered into for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government) with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work. 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 the requirements of 37 C.F.R. 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 FEMA.

Clean Air Act And Federal Water Pollution Control Act: Applies to contracts awarded of amounts in excess of \$150,000 under a federal grant. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). 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. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

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 (Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 Nonprocurement Debarment and Suspension): Contractor shall make no contract or subcontract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

Suspension and Debarment Provisions:

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the Port of Texas City Security Council. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Port of Texas City Security Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 and FEMA's regulation at 44 C.F.R. Part 18). This requirement applies to all contracts. Contractor certifies that it 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 contract which in part or wholly

funded through a grant or any other award covered by 31 U.S.C. § 1352.

Contractors that apply or bid for a contract of \$100,000 or more must file the required certification. FEMA’s regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Such disclosures are forwarded by the contractor to the Port of Texas City Security Council who will then submit the certification to FEMA.

Required Certification. Contractors that apply or bid for a contract of \$100,000 or more must sign and submit to the Port of Texas City Security Council the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor, , certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

Date

Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

(i) Covered telecommunications equipment or services that:

i. Are not used as a substantial or essential component of any system; and

ii. Are not used as critical technology of any system.

(ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

Domestic Preferences for Procurements. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide the Port of Texas City Security Council, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the Port of Texas Security Council and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders. The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies,

procedures, and directives.”

No Obligation by Federal Government. The contractor acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and false or Fraudulent Statements or Related Acts. The False Claims Act (31 U.S.C. §§ 3729-3733) prohibits the submission of false or fraudulent claims for payment to the federal government. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.