

DATE: July 16, 2019

TO: Port Commission

FROM: Louis A. Klusmeyer, P.E., S.E.
Chief of Design
Engineering Services

Approve a Professional Consulting Services Contract in the Amount of \$1,240,000 with Hudson Construction Consultants, Ltd., for Project Management Services Associated with the Harbor Island Dock and Berth Facilities Project.

SUMMARY: Staff recommends approval of a Professional Consulting Services Contract with Hudson Construction Consultants, Ltd. with a ceiling price of \$1,240,000 to provide project management services associated with the design and construction of the dock and berth facilities at Harbor Island.

BACKGROUND: Per the terms of PCCA's Lease Agreement (Lease) with Lone Star Ports (LSP) effective May 15, 2019 for the development of a crude oil export terminal on Harbor Island (see attached map exhibit), the PCCA is required to engage the services of a design engineer for two new oil docks and associated handling equipment, as well as the dredging of berths and approach areas for each of the docks. LSP will provide all necessary equipment and pipelines to receive and handle the crude from pipelines and dock facilities to and from the terminal including pipelines, valves, meter and VCU skids, sampling equipment, utility tanks, pumps, vapor lines, storage, equipment, and other materials and supplies required to operate the Harbor Island Crude terminal. At last month's Port Commission Meeting, the Commission approved a contract with Lloyd Engineering for design of the Dock and Berth Facilities on Harbor Island as the first step in fulfilling the PCCA's responsibilities in the Lease.

The contract for design and future contracts for construction of the facilities on Harbor Island will be executed on a very compressed schedule. PCCA staff will need the assistance of a project management team to perform the necessary oversight of these design and construction contracts. In June 2019, PCCA requested proposals from three project management firms to provide this service. After review of submittals in response to that Request for Proposals, Hudson Construction Consultants, Ltd. was unanimously chosen by the evaluation committee as the most suitable firm to provide these project management services.

PCCA staff negotiated the scope and fee included in the attached Professional Consulting Services Contract for these services. The services provided by this firm will include project management of the design and construction of the dock and berth facilities on Harbor

Island. This firm may also be utilized to perform the same services for other projects currently anticipated on Harbor Island.

ALTERNATIVES: N/A

CONFORMITY TO PORT POLICY: The project conforms to the PCCA's Strategic Plan 2023 (Strategic Goal #3 – Provide Facilities and Services to Meet Customer Needs).

EMERGENCY: NA.

FINANCIAL IMPACT: This project was included in the Engineering Department's 2019 capital budget for Oil Dock Strategic Projects.

STAFF RECOMMENDATION: Staff recommends approval of the attached Professional Consulting Services Contract with Hudson Construction Consultants, Ltd. in an amount not to exceed \$1,240,000 to provide project management services for the design and construction of the Harbor Island Dock and Berth Facilities. The Long Range Planning Committee reviewed this request on July 9, 2019 and recommends approval by the PCCA Commission.

DEPARTMENTAL CLEARANCES:

Originating Department Reviewed & Approved	Engineering Services Louis Klusmeyer Sonya Lopez-Sosa Natasha Fudge
Legal Senior Staff	PCCA's Professional Consulting Services Contract Template Sean Strawbridge Clark Robertson Kent Britton

LIST OF SUPPORTING DOCUMENTS:

Map Exhibit
Consulting Services Contract

Project Management of Harbor Island Dock and Berth Facilities Contracts for Design and Construction



CONSULTING SERVICES CONTRACT

THIS CONTRACT (the “Contract”) is made and entered into effective as of the 16th day of July, 2019 (“Effective Date”) by and between the Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), and Hudson Construction Consultants, Ltd. (“Consultant”), each a “Party” and collectively as “Parties”.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. CONTRACT: Authority hereby engages the Consultant and the Consultant hereby accepts its engagement for the purpose of providing to Authority the consulting services (“Services”) as are generally described in the “Scope of Services” set forth in Exhibit A to this Contract which is incorporated herein by reference.

2. PERIOD OF SERVICE: The Consultant shall complete the Services on or before June 30, 2021 (the “Deadline”), unless the Authority agrees to extend the Deadline for good reason; provided, however, that the Authority may terminate this Contract at any time in accordance with Section 14. Time is of the essence in performance of this Contract. There will be no obligation established between Authority and the Consultant for performance of the Services until Authority provides the Consultant execution of this Contract and receipt by the Authority of appropriate Certificates of Insurance and other documentation as may be required herein. The term of this Contract (“Term”) shall begin on the Effective Date and shall end on the first to occur of the following: (1) the Deadline, as the same may have been extended by the Authority, (2) the date on which, in the opinion of Authority, all of the Services have been rendered, (3) the date on which this Contract is terminated by the Authority pursuant to Section 14, or (4) the date on which this Contract is terminated by the Consultant pursuant to Section 14.

3. COORDINATION OF SERVICES BY AUTHORITY: Authority shall designate a Contract Representative who will, on behalf of Authority, coordinate with the Consultant and administer this Contract. It shall be the responsibility of the Consultant to coordinate all assignment-related activities with the Contract Representative.

For the purposes of this Contract, the Representative shall be:

Louis Klusmeyer P.E., S.E.
Port of Corpus Christi Authority
222 Power St.
Corpus Christi, Texas 78401
(361) 885-6132
E-mail: klusmeyer@pocca.com

Authority may change the Contract Representative at any time by giving the Consultant written notice of such change.

4. NOTICES: Notices, demands, requests or other formal communication related to the Contract shall be deemed to have been given when received, whether delivered personally or mailed. E-mail communications may be considered as formal notification provided the e-mail message states the message is intended as a formal notice and the receiving Party acknowledges receipt of the message as a formal notification. Notices shall be addressed as follows:

If to the Authority: Sean Strawbridge
Chief Executive Officer
Port of Corpus Christi Authority
222 Power Street
Corpus Christi, Texas 78401
E-mail: sstrawbridge@pocca.com

If to the Consultant: Stephen G. White
President
Hudson Construction Consultants, Ltd.
P.O. Box H-45123
Freeport, Grand Bahama Island
E-mail: sgwhitehouse@att.net

Either Party may change the mailing or E-mail address for notifications by providing written notice of such change to the other Party.

5. CHANGES: This Contract may be changed or modified at the request of either the Consultant or the Authority, provided both Parties agree to the requested change, and a written amendment or modification of this Contract is prepared and executed by the Parties.

6. CONSULTANT'S RESPONSIBILITIES: In addition to all other obligations contained herein, the Consultant agrees, warrants, and represents that:

6.1 The Consultant will furnish all material, equipment, labor and supplies in such quantities and of the proper quality to professionally and timely perform the Services, except as otherwise mutually agreed by the Parties;

6.2 The Consultant shall perform the Services with the professional skill and care ordinarily provided by competent consultants practicing in the same or similar locality and under the same or similar circumstances and professional license;

6.3 The Consultant will comply with the provisions of all federal, state, and local laws, regulations, ordinances, requirements and codes which are applicable to its performance of Services;

6.4 The Consultant is not and will not be bound by any agreement and has not assumed nor will assume any obligation which would, in any way, restrict its ability to perform the Services or be inconsistent with the Services;

6.5 In performing the Services, the Consultant will not use any third party's confidential or propriety information, or infringe the rights of another party, nor will the Consultant disclose to the Authority, or bring onto the Authority's premises, or induce the Authority to use any third party's confidential or proprietary information;

6.6 The Consultant does not have the authority to act for the Authority, bind the Authority in any respect, or incur any debts or liabilities in the name of or on behalf of the Authority, except as otherwise expressly authorized in writing by the Authority;

6.7 Consultant is an independent contractor for the performance of his duties under this Contract. Accordingly, the Consultant shall be responsible for payment of all taxes including federal, state and local taxes arising out of the Consultant's activities in accordance with this Contract. Consultant is responsible for payment of the compensation, including any withholding, Social Security, or other taxes on such compensation, of any subcontractors retained by Consultant, or Consultant's employees performing Services consistent with its status as an independent contractor and in compliance with all applicable laws and regulations;

6.8 Consultant has and hereby retains full control of any supervision over the Consultant's obligations hereunder and over any persons employed or subcontracted by the Consultant for performing Services hereunder;

6.9 Consultant will in no way be considered an agent, partner, joint venturer, or employee of Authority at any time during the Term. Consultant will not undertake to commit Authority to any course of action in relation to a third party unless expressly requested and authorized to do so by the Authority in writing.

6.10 As of the Effective Date and at all times while providing Services hereunder, the Consultant shall possess and maintain in good standing any and all licenses or other authorizations and approvals necessary to perform the Services.

6.11 Consultant will not be held responsible for design defects and does not assume any of the contractual responsibilities or duties of the architect-engineers. The architect-engineers are solely responsible for the project designs and shall perform all design related services in accordance with their contracts with the Authority. Consultant also does not assume any of the contractual responsibilities or duties of the construction contractors, including but not limited to job site safety. The construction contractors are solely responsible for construction means, methods, sequences and procedures used in the construction of the project, and for related performance in accordance with their contracts with the Authority.

7. COMPENSATION: The compensation to be paid Consultant for providing the Services shall be the compensation described in Exhibit B hereto, which is incorporated herein by reference; provided, however, the total paid to Consultant for the Services including reasonable travel expenses and other expenses shall not exceed **One Million Two Hundred**

Forty Thousand Dollars (\$1,240,000). Consultant will obtain the approval of Authority's Project Representative relative to incurring travel and other expenses before incurring such costs.

8. INVOICE PROCEDURE AND PAYMENT: Consultant shall submit invoices monthly to the Authority for work performed during the preceding calendar month. Such invoices shall be due and payable by Authority on or before thirty (30) days from receipt by Authority. Monthly compensation will be for the Services actually performed during the billing period, invoiced in accordance with the Fee Schedule included in Exhibit B. Invoices shall also describe any reimbursable costs. Consultant will provide sufficient detail with each invoice to substantiate the requested amount of monthly payment. At the Authority's request, Consultant will provide additional backup such as invoices for materials and subcontracted service or other documentation sufficient to establish the accuracy of the invoices.

9. INSURANCE: Consultant shall procure and maintain at its sole expense, for as long as Consultant is obligated to provide Services under this Contract, the policies of insurance described in Exhibit C attached hereto and in at least the minimum amounts specified in Exhibit C to protect Consultant from claims which may arise out of or result from Consultant's Services pursuant to this Contract, whether such operations be by Consultant, by any subcontractor of Consultant, by anyone directly or indirectly employed by Consultant or Consultant's subcontractor, or by anyone for whose acts Consultant or Consultant's subcontractor may be liable. At least five (5) days prior to execution of this Contract, Consultant will provide to Authority's Risk Program Manager certificates of insurance issued by each insurance company providing any of the required insurance coverage, and the text entered in each certificate must be acceptable to Authority. The requirement to provide acceptable certificates of insurance is a material condition of this Contract, and work under this Contract will not commence until certificates of insurance have been received, reviewed, and accepted by Authority. The minimum limits of liability and coverage for the insurance required are set forth in Exhibit C attached hereto, which is incorporated herein by reference.

10. INDEMNIFICATION AND RELEASE. Consultant hereby releases and discharges Authority and its agents, servants, representatives, employees, officers, directors, and Port Commissioners (collectively, the "Authority Parties") from liability for and assumes the risk of loss or damage to the property of Consultant and the injury or death of any person employed by Consultant. Consultant shall defend, indemnify and hold harmless the Authority Parties from and against all damages, losses, costs and expenses, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorneys' fees and the cost of defense), in connection with any action, proceeding, demand or claim but only to the extent caused by the negligent acts, errors, or omissions of the Consultant, its employees, agents, or subconsultants, or others for whom the Consultant is legally liable, in the performance of Services under this Contract. The Consultant is not obligated under this paragraph to indemnify the Authority Parties for the negligent acts of the Authority Parties.

Consultant's indemnity obligations under this Section 10 shall not be limited by a limitation on the amount or type of damages, compensation or benefits owed by Consultant to any employee of Consultant under workers' or workmen's compensation acts, disability benefit

acts, or other employee benefit acts. The obligations of the Consultant under this Section 10 shall survive the end of the Term of the Contract.

11. LIMITATION OF LIABILITY: Except as otherwise expressly provided herein, neither Party shall be liable or responsible to the other Party for any indirect, incidental or consequential loss or damage of any nature whatsoever (including, but not limited to, contract, negligence or tort liability) of the other Party, including without limitation, any actual or anticipated profits, loss of time, inconvenience, commercial loss or any other damages, even if the Party has advance notice of the possibility of such damages.

12. DISCLOSURE OF INTERESTED PARTIES: Consultant will comply with the provisions of Section 2252.908 of the Texas Government Code and Chapter 46 of the Texas Ethics Commission Rules by preparing a Texas Form 1295, "Certificate of Interested Parties" and submitting the signed form to Authority at the time Consultant submits the signed contract to Authority. This provision will only apply to contracts approved by the Port of Corpus Christi Authority Port Commission.

13. ASSIGNMENT: Neither Authority nor Consultant will assign or transfer its interest in this Contract without the written consent of the other.

14. SUSPENSION OR TERMINATION: Authority may suspend or terminate this Contract for convenience with fourteen (14) days prior written notice to Consultant of such action. Upon termination of this Contract in accordance with this paragraph, Authority will have no further obligation to the Consultant hereunder except to pay the Consultant unpaid fees and expenses which the Consultant can reasonably show to have been earned under this Contract. **Under no circumstances may Consultant claim or recover consequential damages from Authority.**

In the event of suspension of Services, the Consultant shall resume the full performance of the Services when directed in writing to do so by Authority. Suspension of the Services for reasons other than the Consultant's negligence or failure to perform shall not affect the Consultant's compensation as provided for in this Contract. The schedule for performance of the Services shall be amended by a mutually agreed, written modification to this Contract to reflect the suspension.

Either Party may terminate this Contract by giving written notice to the other Party if the other Party ("Defaulting Party"): (a) materially breaches any term, condition or provision of this Contract and fails to cure the breach to the satisfaction of the notifying Party within ten (10) days after the Defaulting Party receives a written notice of the breach from the notifying Party, or (b) becomes the subject of any proceedings under state or federal law for the relief of debtors or otherwise becomes insolvent, or bankrupt, or makes any assignments for the benefit of one or more creditors.

15. DISPUTES: Each Party agrees that any dispute between the Parties relating to this Contract will first be submitted in writing to a panel of two senior executives of the Authority and Consultant, who shall promptly meet and confer in an effort to resolve such dispute through

good faith consultation and negotiation. Each Party's executive shall be identified by notice to the other Party, and may be changed at any time thereafter also by notice to the other. Any decisions of the executives will be final and binding on the Parties. In the event the executives are unable to resolve any dispute within thirty (30) days after submission to them, either Party may then refer such dispute to mediation.

If the Parties refer to mediation any controversy or claim arising out of or relating to this Contract or the existence, validity, breach or termination thereof, whether during or after its term, they shall select a mutually acceptable mediator within forty-five (45) days thereafter. Neither Party shall unreasonably withhold consent to the selection of a mediator. The Parties shall share equally the costs of mediation. If the Parties agree, they may substitute other forms of alternative dispute resolution. Any mediation shall not extend beyond thirty (30) days after the appointment of the mediator, and should the Parties fail to resolve any dispute by mediation within such 30-day period, the Parties shall have all rights available at law or in equity.

16. ATTORNEY'S FEES, DEFAULT: In the event Consultant or Authority breach any of the terms of this Contract and the Party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting Party agrees to pay reasonable attorney's fees and costs incurred by the prevailing Party.

17. STAFFING: Consultant will designate in writing to Authority its representative, and the manner in which it will provide staff support for the project, which must be approved by Authority. Consultant must notify Authority's Contract Representative of any change in personnel assigned to perform work under this Contract, and the Authority's Contract Representative has the right to reject the person or persons assigned to fill the position or positions. The Authority's Contract Representative shall also have the right to require the removal of the Consultant's previously assigned personnel, including Consultant's representative, provided sufficient cause for such removal exists. The criteria for requesting removal of an individual will be based on, but not limited to, the following: technical incompetence, inability to meet the position's qualifications, failure to perform, poor attendance, ethics violation, unsafe work habits, or damage to Authority or other property. Upon notice for removal, Consultant shall replace such personnel with personnel substantially equal in ability and qualifications for the positions and shall submit the proposed replacement personnel qualification and abilities to the Authority, in writing, for approval.

18. OWNERSHIP OF WORK PRODUCT: Studies, plans, reports, surveys, drawings, specifications, computations and other information (collectively "Work Product") and documents prepared by the Consultant, subconsultants, and/or suppliers under this Contract will remain the Authority's property upon completion. This provision does not apply to pre-existing proprietary information of Consultant, subconsultants, and/or suppliers.

19. CONFIDENTIAL INFORMATION: It is understood that information developed by or communicated to Consultant in the performance of this Contract, as well as any and all information in whatever form or medium supplied to Consultant in connection herewith which is not generally available to the public is proprietary to the Authority and constitutes confidential information of the Authority. Consultant will make no oral or written disclosure of such

information to third parties either during or after the term of this Contract, except as approved in writing by the Authority's Contract Representative or as otherwise required by law. In the event the Consultant becomes aware that confidential information must be disclosed under a legal requirement, Consultant will notify Authority of the requirement and the affected information.

20. FORCE MAJEURE: Neither Party shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such obligation is delayed by any cause beyond the reasonable control of the affected Party. In the event of such a delay, the time for performance for the affected Party shall be extended for a period equal to the time lost during the delay, or the Contract may be terminated in accordance with terms herein should such delay be sufficient that termination is in the best interest of the Authority.

21. SEVERABILITY and WAIVER: If any part of this Contract is held to be invalid, illegal, or unenforceable in any respect, such determination shall not affect any other provision of this Contract, and this Contract shall then be construed as if the invalid, illegal, or unenforceable provision had not been included in this Contract. Further, the failure of either Party in any one or more instances to insist upon strict performance of any of the terms and provisions of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms, provisions or options on any future occasion.

22. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The Parties agree that venue of all claims and lawsuits arising out of this Contract shall lie in Nueces County, Texas.

23. OPEN RECORDS: The Authority is a governmental body subject to the requirements of the Texas Public Information Act (Texas Government Code, chapter 552), and as such the Authority is required to disclose to the public (upon request) this Contract and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, the Consultant agrees that the disclosure of this Contract or any other information or materials related to the consummation of the transactions contemplated hereby to the public by the Authority as required by the Texas Public Information Act or any other applicable law will not expose the Authority (or any party acting by, through or under the Authority) to any claim, liability or action by the Consultant.

24. NO ORGANIZATIONAL CONFLICT OF INTEREST: Consultant hereby certifies that it has no actual or potential Organizational Conflict of Interest. "Organizational Conflict of Interest" means that because of other activities or relationships with other persons or entities, the Consultant is unable or potentially unable to render impartial assistance or advice to Authority or the Consultant's objectivity in performing the services under this Contract is or might otherwise be impaired. Consultant agrees to immediately notify Authority of any actual or potential Organizational Conflict of Interest that develops during the term of this Contract. Consultant agrees that Authority may terminate this Contract immediately if it becomes aware of any Organizational Conflict of Interest during the term of the Contract.

25. SECTION 2270.002, TEXAS GOVERNMENT CODE: Pursuant to Section 2270.002, Texas Government Code, and subject to applicable law if this contract is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Consultant hereby represents that Consultant does not boycott Israel and will not boycott Israel through the term of this Contract. For purposes of this representation, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

26. DEFAMATION: The Parties covenant and agree that in no event, and at no time during the Term or at any time thereafter, shall either of them disparage, denigrate, slander, libel or otherwise defame the other or the other’s businesses, services, properties or assets, or employees, personnel, agents, or representatives.

27. HEADINGS: All Section headings or other titles used in this Contract are used solely for convenience and shall not affect or be used in connection with the interpretation or construction of this Contract.

28. ENTIRETY OF CONTRACT: This writing embodies the entire Contract and understanding between the Parties hereto, and there are no other contracts or understandings, oral or written, between them with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Contract shall be valid unless made in writing and signed by both Parties hereto.

[Signature page follows this page]

IN WITNESS WHEREOF, this Contract is made effective as of the Effective Date.

**PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS**

By: _____
Name: Sean Strawbridge
Title: Chief Executive Officer
Date: _____

“Authority”

**HUDSON CONSTRUCTION CONSULTANTS,
LTD**

By: _____
Name: Stephen G. White
Title: President
Date: _____

“Consultant”

EXHIBIT A

SCOPE OF SERVICES

The Consultant will perform the following services in accordance with the terms and conditions set forth in this Contract:

SCOPE OF SERVICES

The Scope of Services includes professional and technical Project Management services for the Authority in their design and construction delivery process for the Harbor Island Dock and Berth Facilities project and other related Harbor Island project(s) upon Authority's direction. The services are to be performed in cooperation with the Authority, its clients, consultants, architect, engineers, and construction contractors as contracted with the Authority. Special coordination and a high level of expectation by the Authority will be held on the Consultant to provide maximum coordination, support, and professionalism.

The Authority anticipates that the Consultant or its Project Management team will consist of two (2) primary roles: Program Manager and Sr. Field Inspector. These individuals will be supplemented with scheduling expert(s), cost estimating, and clerical staff.

Anticipated duties include: Contractor coordination, plan review, pay app reviews, schedule review, submittal tracking and review through a computer software, field inspections, attend all weekly meetings, provide recommendations for any cost savings during the design and construction phase, review and track cost that may come up from any deviation of the plans or unforeseen items. Work directly with the Authority Project Manager on a daily basis and provide updates of progress and daily reports. Consultant will work directly with the contractor to track schedule on a weekly basis to make sure milestones are being met or what changes may be needed.

I. GENERAL OPERATING PARAMETERS

- A. The Consultant shall provide Authority with sound management advice regarding all work performed on the Harbor Island Dock and Berth Facilities project. The goal shall be to achieve the best value in the work being performed by managing schedule and budget. The Consultant shall also be proactive in helping to resolve problems and minimize claims taking all reasonable measures to anticipate problems and delays and to minimize or eliminate their adverse impact on project completion. The Consultant must take the initiative and act to mitigate circumstances that could lead to claims, resolve conflicts promptly, and keep the Authority advised of any potential disputes. The Consultant shall exercise all due diligence, utilizing competent personnel within authorized limitations, to make certain that work is performed in conformity with applicable requirements (codes, regulations, standards, construction contract plans and specifications).

- B. The Consultant shall develop and maintain good working relationships with Authority personnel, client agency personnel, Engineering personnel, developers, and construction contractors involved with all work performed.
- C. The Consultant will not be held responsible for design defects and does not assume any of the contractual responsibilities or duties of the architect-engineers. The architects-engineers are solely responsible for the project designs and shall perform all design related services in accordance with their contracts with the Authority. The Consultant also does not assume any of the contractual responsibilities or duties of the construction contractors. The construction contractors are solely responsible for construction means, methods, sequences and procedures used in the construction of the projects, and for related performance in accordance with their contracts with the Authority. The Consultant does not have the authority to commit or obligate the Authority.
- D. The Consultant shall advise the Authority immediately of any potential delays in completion of work associated with Work Authorizations and any problems that are outside the responsibilities of the Consultant per the Work Authorizations issued.
- E. The Consultant shall be responsible for the security of all project documents provided to them for work under Work Authorizations in accordance with the provisions set forth Authority's policy on dissemination of information. The principles of this policy indicate that building/project information is to be given only to those with a need to know; that records be kept of who got the information; that good judgment, common sense, and reasonableness be used to safeguard the information during use, and that it be returned or properly destroyed after use as directed by the Authority.
- F. The Consultant shall establish and maintain proper business relations with representatives of the construction contractor(s), with A/E firms and with the Authority Manager(s) at the work site. Any known or anticipated conflicts of interest shall immediately be identified in writing to the Work Authorizations contracting officer.
- G. The official dealings of the Consultant shall be with prime contractors and Team Members, but not with subcontractors.
- H. Consultant personnel shall not settle disputes or differences of opinion between prime contractors and their subcontractors, or between subcontractors.
- I. Where differences of opinion exist between Consultant personnel and Authority personnel, the differences shall not be discussed in the presence of prime contractors or their subcontractors.
- J. The Consultant shall not disseminate any information concerning the project or any information that might be confidential, inflammatory, or derogatory. All requests for information must immediately be forwarded to the Authority Representative before being acted upon.
- K. The Consultant shall not issue written or oral instructions to, or make any agreements with, prime contractors or their representatives which affect the work in material ways, or

which may result in disputes and claims. The Consultant has no authority, either implied or explicit, to bind the Authority in any manner. The Consultant shall not represent him or herself as a Authority employee under any circumstances and shall further clearly identify that he or she is a contractor employee when interacting with other contractors and Authority Officials.

- L. The Consultant shall not under any circumstances assume the responsibilities of the construction contractor(s). This specifically includes the areas of quality control, safety or coordination of work to be performed by subcontractors.
- M. The Consultant shall establish all necessary liaisons, coordination, and support with any project related agencies and representatives at the Federal, State, Regional, and Local levels as appropriate for each Work Authorization. The Consultant shall also coordinate work with clients, Engineers, and construction contractors involved with work under each Work Authorizations.
- N. For each Consultant employee located full time at a project site, the Consultant shall provide its own computer equipment and software to fully satisfy all operational requirements of the Authority. No direct reimbursement is authorized for such items. The Consultant's equipment and software must be compatible with the system and software used by the Authority, i.e. Microsoft Office applications like AutoCAD (latest release), Office 365 (including Outlook, Word, Excel, PowerPoint), Oracle P6 and Project Management Software.

II. PROFESSIONAL SERVICE TASKS

A. TASK 1: PRE-CONSTRUCTION SERVICES

- i. Project Preplanning/Programming Phase Services. Such services include: project management of initial planning; feasibility studies; economic studies; site studies; site investigations; site surveys; preparation of budget and cost estimates; preparation of preliminary schedules; cost modeling and analysis; and cost control management.
- ii. Project Design Phase Services: These services may include: design management; constructability reviews; conducting/participating in Value Engineering workshops; analysis of Value Engineering proposals; preparation of cost estimates (including independent check estimates); cost analysis; cost control/monitoring; energy studies; utility studies; site investigations; site surveys; hazardous material surveys/analysis; scheduling (including preparation of schedules and schedule reviews); design problem resolution; review of design scope changes (including analysis of schedule impact); scheduling/conducting/documenting design related meetings; participation in Time of Performance meetings to establish construction durations; participation in all "Partnering" activities during design (workshops, meetings); and performing market studies (material availability, contractor interest).

B. TASK 2: BIDDING PHASE SERVICES

Project Procurement Phase Services: These services may include: providing assistance to the Authority Contracting Officer to evaluate the contractors bid packages, and support to the Authority during the evaluation of these submittals.

C. TASK 3: CONSTRUCTION PHASE SERVICES

- i. Project Construction Phase Services. These services include: setting up job files, working folders, and record keeping systems; maintaining organized construction files; scheduling and conducting preconstruction meetings; handling/preparing project correspondence to respond to the parties involved with each project, confirm verbal discussions/directives, document actions taken and decisions made; preparing and maintaining daily diaries for project activities noting events affecting construction progress (weather, manpower, site equipment, work performed); monitoring the submittal review process including maintenance of submittal logs; review and monitoring of project schedules for construction progress with emphasis on milestone completion dates, phasing requirements, work flow, material deliveries, test dates, assisting in problem resolution and handling of disputed issues (including development of Authority position, drafting final decision letter); ensuring the contractor is maintaining marked up sets of project plans and specifications for future as-built drawings; performing routine inspections of construction as work proceeds, taking action to identify work that does not conform to the contract requirements, and notifying the Contractor when work is thought to require correction; compiling, through site inspections, lists of defects and omissions related to the work performed and providing these lists to the Contractor for determination of the need for correction; review of construction contractor payment requests (including preparation of necessary forms for payment processing by Authority); monitoring and reporting project financial data and budgetary cost accounting (maintain spreadsheets indicating project fund allowances, obligations, payments, balances, planned expenditures); administration of construction contract change orders(preparing cost estimates, reviewing cost proposals at the request and providing recommendations to the Authority in negotiations or handling negotiations, preparing change order packages for processing); scheduling, conducting, and documenting regular progress meetings with all interested parties to review project status, discuss problems, and resolve issues; scheduling, conducting, and documenting (prepare minutes for distribution) construction related project meetings; monitoring construction contractor compliance with established safety standards (note and report unsafe working conditions, failures to adhere to safety plan required by construction contract); monitoring construction contractor's compliance with any contract labor standards (including if required, performing site labor interviews, collecting, reviewing, and maintaining weekly payrolls for all project contractors and subcontractors, reporting potential wage violations to Authority personnel); monitoring the design and construction clarification process and, when appropriate, reminding the A/E and other parties involved of the need for timely actions and notifying the Authority of potential delays that the Consultant cannot eliminate; participation in all "Partnering" activities during construction (workshops, meetings,); preparing special reports and regular project status reports; providing for progress and/or final photographs of project

work; and provide cost estimating assistance, commissioning oversight and compiling contractor record drawing information.

- ii. Project Close out: These services shall include, but are not limited to, providing professional and expertise for start-up of a facility or operating systems within a facility. These services may require start-up planning, forecasting start-up duration, estimating start-up costs, organizing start-up teams and team assignments, managing O&M material, overseeing scheduling and scheduling O&M training.
- iii. Claims Services. The Consultant may be tasked to provide Claims Services when and as required by the Government. In the event the Consultant is made aware of any potential claim that may be brought against the Authority, the Consultant shall notify the Authority's Director of Risk Management. For definition purposes, Claims Services apply to providing technical support (not legal assistance) in handling disputed matters once a contractor has made written demand for payment or other relief under the contract and submitted it to the Contracting Officer for decision in accordance with their Contract. A claim does not arise solely upon the occurrence of a dispute or controversy. In relation to Claims Services, the Consultant will review disputes and claims from the A-E and/or construction contractor(s) and render all assistance that the Authority requires, including, but not limited to, the following:
 - a. Furnishing reports with supporting information necessary to resolve disputes or defend against the claims.
 - b. Preparation and assembly of appeal files.
 - c. Participation in meetings or negotiations with claimants.
 - d. Appearance in legal proceedings.
 - e. Preparation of cost estimates for use in claims negotiations.
 - f. Preparation of risk assessments/analyses relative to claim exposures.
 - g. Preparation of findings of fact and any other documentation required by the Government
- iv. Post Construction Services: At or near substantial completion of project construction, the Consultant may be tasked to provide services such as:
 - a. Assisting Authority in the formulation of lessons learned.
 - b. Providing telecommunication and computer coordination.
- v. Project Management Team Staffing: The Consultant will utilize the key personnel, specialists, and individual consultants, as accepted by the Authority, for the Harbor Island Dock and Berth Facilities project.

- a. It is anticipated that the project management team will consist of two (2) primary roles: Consultant and Sr. Field Inspector. These individuals will be supplemented with scheduling expert(s), materials testing and topographic and bathymetric surveying capabilities.
 - b. In the event that any of the key personnel named in the Consultant's quotation, as accepted by the Authority for this project, are unable to perform because of death, illness, resignation from employ, dissolution of agreement, or other reasons, the Consultant shall submit within 24 hours to the Authority, detailed written explanations of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any other information that the Authority deems pertinent to approve the substitution. No substitution is to be made without the prior written approval of the Authority. No increases in hourly rate pricing will be allowed when substitutions are authorized by the Authority.
 - c. The Authority will have the right to effect removals of any Consultant employees during the life of the Authorization, if those employees are deemed not to possess the proper level of competence or abilities, or otherwise found to be unsuitable for work required. In such cases, the Consultant must promptly submit the names and any other information pertinent to approvals of substitutions if requested.
 - d. Failure or delays by the Consultant in providing qualified personnel, who meet the stated requirements of the project, may be deemed sufficient reason by the Authority to recommend termination for cause to the Work Authorizations Contracting Officer.
- vi. Progress Reports and Records: A written monthly report will be provided to the Authority's Representative beginning one month after award of the Project. The report shall summarize the status identifying pending and issued Contracts for projects under the management of the Consultant. The report shall also provide a summary indicating the current status of the cost, schedule and quality on the project. It shall be the responsibility of the Consultant to provide this report.

EXHIBIT B

FEE SCHEDULE

The Consultant will perform the Services described in Exhibit A in accordance with the terms and conditions of this Contract on a fixed rate or an hourly fee basis; provided, however, that the total fee for services rendered under this Contract will not to exceed \$1,240,000, without Authority's written approval. Services provided by Consultant will be billed as specified in Exhibit B. These fees will cover all of Consultant's overhead costs, including but not limited to, office rent, long distance telephone charges, postage, payroll and copying charges.

Mr. Stephen White – Program Manager	\$ 185 per hour
Mr. A.J. Foster – Senior Field Inspector	\$ 140 per hour
Mr. Robert Paull – Project Engineering Manager	\$ 165 per hour
Mr. Edward Farber – Lead Project Controls	\$ 130 per hour
Mr. Ron May – Senior Contracts Manager	\$ 160 per hour
TBD – Project Engineer	\$ 135 per hour
Mr. Andrew White – CAD Design	\$ 115 per hour
TBD – Document Control Specialist	\$ 115 per hour
Ms. Kimberly Melton – Project Accounting	\$ 95 per hour
TBD – Administrative Assistant	\$ 50 per hour

The Authority agrees to reimburse the Consultant for certain authorized and approved travel expenses incurred by the Consultant during the Term and directly resulting from the Consultant's performance of the Services under this Contract. Authority will also reimburse the Consultant for Direct Costs incurred by the Consultant in performing the Services. The Consultant shall submit proper documentation of any such approved travel expenses and Direct Costs to Authority from time to time, and such costs and expenses shall be billed to Authority at Consultant's actual cost.

Not later than the twentieth (20th) day of each calendar month, Consultant shall submit to Authority detailed invoices for all services performed and Direct Costs incurred, if any, pursuant to this Agreement during the prior calendar month. The invoices shall describe the Services performed during the prior month, approved Direct Costs, milestone achievements, and tasks performed or completed. Authority shall review the invoices and notify Consultant in writing (including email) within twenty (20) days of any disputed amounts.

Should this Contract be terminated for any reason, the Consultant will be paid all fees earned up to the termination date and any approved direct expenses incurred.

The fees listed on Exhibit B will remain in effect throughout the duration of this contract.

Living Expenses/ Per Diems

For personnel assigned to the project from outside the Corpus Christi area, and for Corpus Christi-based personnel who have the need to travel out of the Corpus Christi area for business purposes, travel and living expenses will be charged as either (i) actual costs for lodging, meals and incidental expenses, charged at cost, or (ii) a per diem in accordance with U.S. government guidelines will be charged. Rental cars and fuel are additional to any per diems.

Subcontracts and Purchased Materials

All expenses associated with subcontracts and purchased materials will be invoiced at actual cost plus ten percent (5%).

Mobilization Costs

In order to rapidly mobilize our key personnel to Corpus Christi, Consultant may submit mobilization expenses for an amount not to exceed \$20,000. Mobilization shall be invoiced at actual costs which can be invoiced within seven (7) days of contract execution .

Factory Acceptance Tests for Equipment

Factory Acceptance Tests (“FAT”) at a manufacturer’s facility will be conducted for marine loading arms, quick release hooks, and gangway towers. Consultant will have one of its senior personnel in attendance at each FAT, and typically these tests are performed at the manufacturer’s facility in Europe. Airfare associated with travel for these tests will be in business class.

EXHIBIT C

INSURANCE

Without limiting the indemnity obligations or liabilities of Consultant or its insurers, provided herein, Consultant agrees to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

<u>TYPE OF INSURANCE</u>	<u>LIMITS OF LIABILITY</u>
A. Workers' Compensation	Statutory
B. Employer's Liability	\$1,000,000 per Occurrence \$1,000,000 Aggregate
C. Commercial General Liability	\$1,000,000 per Occurrence \$2,000,000 Aggregate

The CGL Policy will provide contractual liability coverage at the aforementioned limits.

D. Business Automobile Liability	\$1,000,000 per Occurrence
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Automobile liability insurance coverage will include all owned, non-owned, and hired vehicles.

E. Professional Liability/Errors & Omissions	\$1,000,000 per Occurrence
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Consultant will procure and maintain professional liability insurance for protection from claims arising out of performance of its Services under this Contract caused by any error, omission, or act for which the Consultant is legally liable. Policies written on a claims-made basis shall have an extended reporting period of at least two (2) years beyond termination of the Contract.

Each policy, except Professional Liability, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the Authority, its Port Commissioners, officers and employees ("Authority Parties"). Additionally, the Authority Parties shall be designated as an Additional Insured either by a blanket additional insured or a specific endorsement on all policies, except for Worker's Compensation, Employer's Liability, and Professional Liability. In the event that the work of Consultant's employees fall within the purview of the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or the Federal Employer's Liability Act, Consultant shall extend its insurance coverage to provide insurance against the liabilities imposed under the applicable Act or Acts.

Each policy, except Workers' Compensation and Professional Liability, must contain an endorsement that the policy is primary to any other insurance available to the Additional Insureds with respect to claims arising under this Contract.

The insurance required as listed above, shall apply to any contractor or subcontractor performing for or on behalf of Consultant, and Consultant shall ensure that any such subcontractor is aware of and is in compliance with the insurance requirements during any period such contractor is performing work under this Contract.

The minimum insurance required may be increased periodically upon request by Authority to commercially reasonable limits. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least "A-, VII".

Consultant's liability shall not be limited to the specified amounts of insurance required herein.