

**THIRD AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT FOR
FEDERAL INITIATIVES PROGRAM**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this Third Amendment to the Professional Services Agreement for Federal Initiatives Program ("Third Amendment") is entered into by the Port Authority of San Antonio ("the Authority" or "Owner"), a Texas Defense Base Development Authority, the City of San Antonio ("City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____, passed and approved on _____, 2014, and Patton Boggs, LLP ("Consultant") acting by and through its duly authorized designated officer.

Whereas, Owner and Consultant entered into the Professional Services Agreement for Federal Initiatives Program ("Agreement") effective November 15, 2009, which has been modified by the First Amendment, effective October 1, 2010, and the Second Amendment, effective December 16, 2013; and

Whereas, City and Consultant previously entered into a Professional Services Agreement for Federal Representation Services which expired December 30, 2013; and

Whereas, during the term of this Agreement, City shall take reasonable steps to actively recruit other public entities to consolidate federal legislative consultant efforts; and

Whereas, Owner, City and Consultant agree to amend specific provisions of the Agreement, as set out in this First Amendment, in order to incorporate Consultant providing services to City under the Agreement; Now therefore:

1. The term for the Agreement shall be extended through December 31, 2014. Additionally, there will be one one-year renewal option (January 1, 2015-December 31, 2015) that may be exercised by the parties through a formal written agreement.
2. All references to Owner or the Authority shall also include City, unless otherwise stated in the Agreement and the Agreement shall be amended in all Sections to reflect such references. Every obligation or right applicable to Owner of the Authority shall also apply to City unless otherwise stated in the Agreement, including the provisions of Sections 9.2 and 9.3.
3. Any reference to "either party" shall be modified to include all three parties.
4. Section 1.1 is deleted in its entirety and replaced with the following:

“Consultant acknowledges that it is engaged to provide Services to the Owner and has the experience in providing requisite services as specified in Exhibit A. Consultant is engaged to provide the Services set forth in Exhibit B to City. Such Services shall address issues contained in City’s Federal Legislative Program, which is attached as Exhibit C. City may update or make changes to Exhibit C and such changes will be incorporated into this Agreement as an addendum without the necessity of any further action. Owner and City hereby retain the Services of Consultant and Consultant shall render Services as described in this Agreement in accordance with the terms and conditions set forth below.”

5. Section 1.2 is deleted in its entirety and replaced with the following:

“This Agreement will be in effect for a period continuing through the completion and close-out of the duties specified in Exhibits A and B, or until terminated by any party in accordance with Article 4 entitled “Termination.”

6. Section 1.3 is deleted in its entirety and replaced with the following:

“Consultant’s personnel assigned to the project shall possess sufficient skills and expertise, and provide any certification(s) to prove qualifications as required to satisfactorily meet all specifications and obligations of Consultant under this Agreement consistent with consultants providing similar types of services in the industry. Owner or City retains the right to reject or require Consultant to remove any employee whose qualifications or performance that, in Owner’s or City’s good faith and reasonable judgment, do not meet the standards necessary for performance of the Services hereunder. Consultant agrees that it shall obtain the written consent of Owner’s President & CEO or his designee and City prior to modifying, changing and/or deleting any key personnel assigned to this Project. No such approval will relieve Consultant from any of the obligations of this Agreement. The roles of, John Deschauer, Jr.; Jared Fleisher and Baltazar Serna as key personnel assigned to this Project, have been approved by Owner for the Services set forth in Exhibit A. The roles of Tom Downs and Sarah Vilms and Baltazar Serna as key personnel assigned to this Project, have been approved by City for the Services set forth in Exhibit B.

7. Section 1.4 is added as follows:

“1.4 Performance measures. A matrix indicating performance measures which will be utilized by City in evaluating the performance of Consultant is attached hereto and incorporated herein as Exhibit D. Some measures require the mutual agreement by Consultant and City during the term of this Agreement or a subsequent renewal option, if applicable. Such

measures, once agreed to by the Parties, will be incorporated into this Agreement as an addendum without the necessity of any further action.”

8. Article 3 is deleted in its entirety and replaced with the following:

“Payments by Owner:

3.1 Pursuant to the detailed terms and conditions contained in Exhibits A, Consultant will be paid for specified Services, for the Basic Contract Period, a total not to exceed amount of \$ \$148,500 for Consultant, and an amount not to exceed \$27,000 for Consultant’s sub-consultant, Serna & Serna, for services related to the scope requirements described herein Exhibit A for a total contract amount not to exceed \$175,500.

3.2 The Consultant shall submit a valid invoice to the Owner’s Accounts payable office within 15 days of completion of services. A valid invoice is one (1) which contains all applicable information (i.e.; contract numbers as provided in writing) and (2) where the Owner can verify the services provided. The Owner will make payment within 30-days of its Accounts Payable Office’s receipt of a valid invoice.

Payments by City:

3.3 In consideration of Consultant’s performance in a satisfactory and efficient manner, as determined solely by City’s Director of Intergovernmental Relations (“Director”), of all services and activities set forth in this Agreement, City agrees to pay Consultant a monthly amount not to exceed \$15,000 as total compensation, not including travel related expenses, to be paid to Consultant as follows:

3.3.1 Consultant shall invoice City monthly for the fee identified in Section 3.3. Said invoice shall include a statement of all work performed under this Agreement during the period covered by the invoice. Consultant shall include on its monthly invoices any expenses for travel by its Washington D.C.-based personnel to San Antonio and its San Antonio-based personnel to Washington D.C., including round trip air fare, ground transportation, lodging and meals. All such travel expenses must be approved in advance by City or they shall not be eligible for reimbursement. Such travel expenses shall be limited to the individuals assigned to provide Services to the City under this Agreement and such expenses shall not exceed \$2,500 per individual per calendar year.

3.3.2 City shall pay Consultant within fifteen (15) days of the receipt of an invoice under Subsection 3.3.1, subject to the provisions of Section 3.5.

3.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The Parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in Section 3.3 above. Total payments to Consultant cannot exceed that amount set forth in Section 3.3 above, without prior approval and agreement of City, evidenced in writing and, if necessary, approved by the San Antonio City Council by passage of an ordinance.

3.5 All work performed for City by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article IV. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.6 City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

3.7 In the event either City or Owner elects to terminate this Agreement or not to exercise an available extension and the other Party remains under this Agreement, the remaining Party's payment to Consultant shall increase by 10%."

9. Section 4.1 is deleted in its entirety and replaced with the following:

"This Agreement may be terminated, in whole or in part, by any Party upon 10 calendar days written notice. Should such election to terminate be made solely by City or Owner, this Agreement shall remain in full force and effect between Consultant and the other Party."

10. Section 7.2 is deleted in its entirety and replaced with the following:

"Consultant agrees that in carrying out its duties and responsibilities under this Agreement, it shall neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any federal, state or local laws, decrees, rules, or regulation in effect; or (ii) would have the effect of causing Owner or City to be in violation of any federal, state or local laws, decrees, rules, or regulations in effect. **Consultant will PROTECT, DEFEND and INDEMNIFY Owner and its officers,**

Board members, employees and agents and City and its elected officials, employees and agents against any claim or liability from or based on any violation of the same.”

11. Section 8.2 shall not apply to City.

12. Article 10 is deleted in its entirety and replaced with the following:

“Article 10. Conflicts of Interest

10.1 “Should Owner and City disagree on any matter contained in Exhibits A or C or disagree on matters sought to be added to Exhibits A or C, Consultant shall not represent either Owner or City on such matter. Both Owner and City shall either represent themselves on such matter or seek services from another consultant.

10.2 Consultant shall not represent any entity, public or private, on any matter that conflicts in any way with the Services provided under this Agreement. The determination of whether or not such a conflict exists shall be solely left to the discretion of City and/or Owner. In the event either City or Owner determines such a conflict, that Party may terminate any or all parts of this Agreement under which Consultant provides Services to such Party. Such termination shall be effective immediately upon written notice from the terminating Party. This Agreement shall remain in full force and effect with respect to the remaining Parties.”

13. Article 11 is deleted in its entirety and replaced with the following:

“11.1 CONSULTANT shall INDEMNIFY, DEFEND and HOLD HARMLESS OWNER, OWNER’s officers, directors, employees, representatives and agents and CITY and CITY’s elected officials, employees, representatives and agents from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court, mediation arbitration or other dispute resolution costs) arising out of or resulting from the performance of professional services, and that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, caused by any act or omission of Consultant, any individual or entity directly or indirectly employed by Consultant to perform or furnish any of the work or anyone for whose acts any of them may be liable, and conditioned as well for the payment of claims for equipment and material, and laborers’ wages.

11.2 In any and all claims against Owner or City or any of their its respective consultants, representatives, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of Consultant, any individual or entity directly or indirectly employed by Consultant to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 11.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts."

14. Section 12.1 is modified by adding the following:

"City of San Antonio
Jeff Coyle, Director of Intergovernmental Relations
111 Soledad, Suite 1600
Phone: (210) 207-7910
Facsimile: (210) 207-8544"

15. Section 12.6 is deleted in its entirety and replaced with the following:

"*Taxes:* Owner is a Texas Defense Base Development Authority and a political subdivision of the State of Texas and City is a political subdivision of the State of Texas, and as such, they are public tax-exempt organizations. Owner and City are exempt from certain sales and use taxes with respect to the purchase price or rental price of all materials, supplies, equipment and consumables that are used by Consultant in performance of the Agreement, and Consultant shall not invoice or charge the Owner for such taxes. Consultant will be provided with a sales tax exemption certificate upon request for such purchases or rentals."

16. Exhibits B, C and D, which are attached to this Third Amendment, shall be incorporated into the Agreement.

Except as otherwise expressly modified hereby, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.

Signatures on following page

EXECUTED AND SIGNED to be effective April 1, 2014.

PORT SAN ANTONIO

Bruce E. Miller
President and CEO

PATTON BOGGS, LLP

John J. Deschauer, Jr.
Partner

CITY OF SAN ANTONIO

Sheryl Sculley
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney