

**MASTER PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE STOCKTON PORT DISTRICT
AND
(SERVICE PROVIDER)
AGREEMENT NO. _____**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) effective as of _____ is made and entered into by and between the STOCKTON PORT DISTRICT, a California Port District with municipal powers organized pursuant to Harbors and Navigations Code section 6200 et seq. (“Port”), and _____ (“Service Provider”).

RECITAL

Port has determined that it requires the following professional services:

 (“Services”).

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, the Port and Service Provider agree as follows:

TERMS AND CONDITIONS

1. Representations and Warranties of Service Provider. Service Provider represents and warrants to Port that:

1.1. It is fully qualified to perform the professional services by virtue of its experience and the training, education, and expertise of its principles and employees.

1.2. It is willing to accept responsibility for performing the services in accordance with the terms and conditions set forth in this Agreement.

1.3. Services Provider holds all licenses and permits required for Service Provider to perform the Services. The applicable licenses and permits for Service Provider and any personnel who shall perform work for Port shall be listed on Exhibit A.

The provisions of this Section 1 shall survive the termination of this Agreement.

2. Services. Subject to the terms and conditions set forth in this Agreement, at the Port's discretion Service Provider shall perform the services identified in the Scope of Services. Specific Scope of Services, work schedule, and cost or estimated cost will be mutually agreed upon and set forth in a Task Order or Task Orders issued by the Port. If the work to be performed by Service provider consists of a single project, a single task order shall be attached to this Agreement. The Scope of Services is attached as Exhibit B and is hereinafter referred to as "Scope of Services" or "Exhibit B". Service Provider shall perform those services described in Exhibit B according to the Service Schedule outlined in each Task Order issued by the Port. Each Task Order shall specifically refer to and incorporate this Agreement by reference. Time is of the essence in this Agreement. However, Service Provider shall not be responsible for delays caused by acts of God or other causes beyond Service Provider's reasonable control.

3. Compensation. Port shall compensate Service Provider for the services provided under this Agreement in accordance with the amount and compensation terms stated in the Fee Schedule attached to each Task Order. Service Provider's total compensation for services performed under this Agreement shall not exceed \$_____. The Port and Service Provider agree that the payment of the amount specified in each Task Order shall constitute full and complete compensation for Service Provider's services. Service Provider represents that it has, or will secure at its own expense, all personnel required to perform the services identified in each Task Order. In no event shall the total compensation and costs payable to Service Provider under this Agreement exceed the sum(s) or otherwise deviate from the sum(s) specified in each Task Order unless expressly approved in advance by the Port and memorialized in a writing which is signed by both parties. Service Provider shall not be compensated for services outside the scope of each Task Order unless otherwise agreed upon in writing pursuant to Section 8 of this Agreement. Service Provider shall submit to the Port an invoice within five (5) business days following the month during which the services performed under each Task Order pursuant

to this Agreement. Each invoice shall itemize the services rendered during the billing period, the total Task Order amount, the amount previously invoiced, the current amount due, and the remaining available amounts. Within ten (10) business days of receipt of each invoice, Port shall notify Service Provider in writing of any disputed amounts included on the invoice. Within thirty (30) calendar days of receipt of each invoice, Port shall pay all undisputed amounts included on the invoice. All costs charged to this Agreement shall be supported by properly executed payrolls, time records, invoices, and vouchers, evidencing in proper detail the nature and propriety of the charges.

4. Term of Agreement. This Agreement shall commence on the date first written above and terminate on _____, unless terminated earlier pursuant to this Agreement or extended by written agreement signed by both parties.

5. Early Termination.

5.1. Termination at Any Time. Port or Service Provider may terminate this Agreement at any time by giving written notice to the other of the termination, and the effective termination date, at least thirty (30) days before the effective date of termination. If this Agreement is terminated by Port, as provided herein, Service Provider shall be reimbursed for billings incurred prior to the termination date, in accordance with the cost provisions of this Agreement.

5.2. Termination for Breach. If Service Provider fails to fulfill in a timely and proper manner its obligations under this Agreement, or if Service Provider violates any of the warranties, covenants, provisions, or stipulations of this Agreement, Port shall thereupon have the rights to terminate the Agreement by giving not less than ten (10) days written notice to Service Provider of the intent to terminate and specifying the effective date thereof. Port shall provide an opportunity for consultation with Service Provider prior to termination. If Port terminates this Agreement, Service Provider shall immediately suspend its activities under this Agreement, as specified in the notice. Service Provider shall be entitled to receive compensation for all satisfactory work completed prior to the effective date of termination.

6. Project Managers. During the performance of this Agreement, the project manager for Port and Service Provider is as specified below and there shall be no change in Service Provider's project manager without Port's prior written consent. All invoices and payments shall be sent to the project managers unless either party specifically provides written notice otherwise.

Service Provider's project manager shall be responsible for keeping Port informed of the progress of the work and shall be available for meetings with the Port.

6.1. Port:

6.2. Service Provider:

7. Discipline. If any of Service Provider's personnel are subject to discipline by any regulatory agency or professional organization and if any of Service Provider's personnel, whether assigned to the work of Port or not, are disciplined to any degree by the regulatory agency or professional organization, the Service Provider shall promptly notify the Port in writing.

8. Amendments. There shall be no change to the Scope of Services, the Service Schedule attached to any Task Order, Fee Schedule attached to any Task Order, or any other term and condition of this Agreement unless mutually agreed upon in writing by the Port and Service Provider.

9. Insurance. Service Provider, at its own cost and expense, shall procure, carry, and maintain throughout the term of this Agreement insurance of the type and amount set forth below. Service Provider shall not commence any work under this Agreement unless and until the Port has certificates of insurance showing that the required insurance is in effect. Service Provider shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement. Service Provider shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Service Provider has also been obtained for the subcontractor and evidence thereof has been presented to the satisfaction of the Port. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide. Service Provider shall provide proof that the required policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same

coverage. The proof shall be furnished at least two weeks prior to the expiration of the coverages.

9.1. Workers' Compensation. Service Provider shall procure and maintain throughout the term of this Agreement Worker's Compensation Insurance in the amount and as required by the laws of the State of California.

9.2. Commercial General Liability Insurance. Service Provider shall procure and maintain throughout the term of this Agreement Comprehensive Commercial General Liability Insurance with minimum coverage limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit coverage for any personal injury, death, loss, and/or property damage associated with the work under this Agreement. Port, its officers, employees, agents, and volunteers are to be covered as additional insureds.

9.3. Automobile Liability Insurance. Service Provider shall procure and maintain throughout the term of this Agreement Automobile Liability Insurance with minimum coverage limits of One Million Dollars (\$1,000,000.00) per incident, combined single limit coverage for any personal injury, death, and/or property damage. Port, its officers, employees, agents, and volunteers are to be covered as additional insureds.

9.4. Professional Liability Insurance. Service Provider shall procure and maintain for the period covered by this Agreement Professional Liability Insurance for licensed professionals performing work pursuant to this Agreement in an amount of at least One Million Dollars (\$1,000,000.00) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:

9.4.1. Any deductible or self-insured retention shall not exceed One Hundred Fifty Thousand (\$150,000) per claim.

9.4.2. The policy must contain a cross liability or severability of interest clause.

9.4.3. The following provisions shall apply if the professional liability coverage's are written on a claims made form:

9.4.3.1. The retroactive date of the policy must be shown and the date must be before the date of the Agreement.

9.4.3.2. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after completion of the Agreement, so long as commercially available at reasonable rates.

9.4.3.3. A copy of the claim reporting requirements must be submitted to Port prior to the commencement of any work under this Agreement.

9.5. Insurance Remedies. In addition to any other remedies the Port may have, if Service Provider fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the Port may, at its sole option:

9.5.1. Obtain the necessary insurance and deduct the amount of the premiums for the insurance from any sums due under the Agreement and bill Service Provider for any remainder;

9.5.2. Order Service Provider to stop work under this Agreement or withhold any payment which becomes due to Service Provider hereunder, or both stop work and withhold any payment, until Service Provider demonstrates compliance with the requirements hereof; or

9.5.3. Terminate this Agreement.

9.5.4. If one of Service Provider's subcontractor's fails to procure and maintain the required insurance, the remedies stated above shall apply against the Service Provider as if the Service Provider failed to procure and maintain the required insurance.

9.6. Other Insurance Provisions.

9.6.1. The insurance provided by Service Provider shall specify or have added as an endorsement that Service Provider's insurance shall be primary to any coverage available to the Port. Any insurance or self-insurance maintained by the Port and/or its officers, employees, agents or volunteers, shall be in excess of Service Provider's insurance and shall not contribute with it.

9.6.2. All the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to Port.

9.6.3. The insurance shall specify that any failure of Service Provider to comply with the reporting provisions of the policy shall not affect coverage provided to Port and its officers, employees, agents, and volunteers.

9.6.4. Service Provider shall disclose the self-insured retentions and deductibles before beginning any of the work called for by any term of this Agreement. During the period covered by this Agreement, upon express written authorization of Port, Service Provider may increase the deductibles or self-insured retentions with respect to Port, its officers, employees, agents, and volunteers. Port may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Service Provider procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

10. Indemnification. Service Provider shall indemnify, defend, and hold harmless the Port, its officers, agents and employees from any and all actions, causes of action, claims, demands, costs, liabilities, judgments, penalties, losses, damages and expenses of whatsoever kind and nature due to the death or injury to any person or persons, or damage to any property that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of the Service Provider, its officers, employees, servants, agents, or subcontractors and their respective employees in the performance of this Agreement. Costs and expenses shall include reasonable attorneys' fees incurred by legal counsel of the Port's choice. This Section 10 shall survive the termination of this Agreement.

11. Assignability. Service Provider shall not delegate, transfer, subcontract or assign its duties, rights, or interests under this Agreement, either in whole or in part, without the Port's prior written consent. Any attempt to do so shall be void and of no effect. All authorized subcontracts shall contain the same applicable provisions specified in this Agreement, including but not limited to, an indemnification provision in favor of the Port identical to that set forth in Section 10 of this Agreement. In the event Service Provider fails to obtain the indemnity obligations from others as required herein, Service Provider agrees to be fully responsible and indemnify, defend, and hold harmless the Port, its officers, agents and employees from any and all actions, causes of action, claims, demands, costs, liabilities, judgments, penalties, losses, damages and expenses of whatsoever kind and nature due to the death or injury to any person or persons, or damage to any property that arises out of, pertains to, or relates to the negligence,

recklessness, or willful misconduct of the subcontractor, its officers, employees, servants, agents, or subcontractors and their respective employees in the performance of their services under this Agreement. Costs and expenses shall include reasonable attorneys' fees incurred by legal counsel of the Port's choice.

12. Ownership of Written Product. All reports, data, documents, charts, drawings or other written or tangible material ("written products") developed, prepared, or assembled by Service Provider in the performance of this Agreement shall be the property of the Port and shall be delivered to the Port in useable electronic and/or written format upon termination or expiration of this Agreement. Service Provider may take and retain copies of the written products as desired, but shall not have copyrights of any written products produced pursuant to this Agreement.

13. Inspection of Work. Service Provider, and any subcontractors, shall permit the Port the opportunity to review and inspect Service Provider's work, including any written products (defined in Section 12), at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis. The written product shall be available for inspection in useable electronic format. In addition, at any time during normal business hours, and as often as Port may deem necessary, Service Provider shall make available for examination all of its records with respect to all matters covered by this Agreement for purposes of audit, examination, or to make copies or transcripts of the records, including, but not limited to, contracts, invoices, material, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this Agreement. Records shall be retained and access to the facilities and premises of Service Provider shall be made available during the period of performance of this Agreement, and for five (5) years after Port makes final payment under this Agreement.

14. Independent Contractor. Service Provider is, and shall at all times remain as to the Port, a wholly independent contractor. Service Provider shall have no power to incur any debt, obligation, or liability on behalf of the Port or otherwise to act on behalf of the Port as an agent. Neither Port nor any of its agents shall have control over the conduct of Service Provider or any of Service Provider's employees, except as set forth in this Agreement. Service Provider shall not represent that it is, or that any of its agents or employees are, in any manner employees of the Port.

15. Permits and Approvals. Service Provider shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement.

16. Confidentiality. All data, documents, discussions, written product or other information developed or received by Service Provider or provided for performance of this Agreement, whether tangible or intangible, are deemed confidential and shall not be disclosed by Service Provider without the prior written consent of the Port. Service Provider represents and warrants to Port that it shall at all times observe the covenant of the preceding sentence. This Section 16 shall survive the termination of this Agreement.

17. Standard of Performance. Service Provider shall perform all services under this Agreement in the manner according to the standards currently observed by a competent practitioner of Service Provider's profession in California and in a manner reasonably satisfactory to Port. The Service Provider shall document all work to the satisfaction of the Port. This may include, but not be limited to, preparation of progress and final reports, calculations, plans, specifications, estimates, evaluations, and other records.

18. Compliance with Applicable Law. Service Provider shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of California Harbors and Navigation Code section 6275 et seq., the Political Reform Act, California Government Code section 81000 et seq., the prevailing wage laws contained in California Labor Code sections 1770 et seq. and 1810 et seq., and Title VI of the Civil rights Act of 1964 as amended. In the performance of this Agreement, Service Provider shall not discriminate against any employee, subcontractor, or applicant for employment because of race, religion, sex, sexual orientation, marital status, national origin, age, or physical or mental disability. Service Provider shall require any of its subcontractors to comply with all applicable federal, state and local laws and regulations, including but not limited to those specifically mentioned in this Section.

19. Contingency Fees. Service Provider warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon a contract or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Service Provider for the purpose of securing business. For breach or violation of this warranty, Port has the right to terminate this Agreement without liability allowing payment

only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

20. Attorneys' Fees and Venue. If any action at law or in equity, including an action for declaratory relief, or any proceeding in arbitration or mediation is brought by any party, the prevailing party in any final judgment or award shall be entitled to recover from the other party the full amount of all reasonable expenses, including all court costs and reasonable attorneys' fees. The venue for any litigation, arbitration, or mediation shall be San Joaquin County, California.

21. Notices. Any notices under this Agreement shall either be personally served on the other party or served by certified mail, return receipt requested, to the following address:

For Port:

For Service Provider:

22. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the term or provision shall be amended to, and solely to, the extent necessary to cure the invalidity or unenforceability, and in its amended form shall be enforceable. In that event, the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23. Cumulative Remedies. Any remedies granted to the non-defaulting party in this Agreement shall not be considered exclusive but rather cumulative and shall exist in addition to any remedies now or hereafter allowed by law or in equity. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of the rights, powers or remedies shall not preclude the simultaneous or later exercise by a party of any of all of the other rights, powers or remedies.

24. Waiver. The waiver by Port of any breach of any term, warranty, covenant or condition herein shall not be deemed to be a waiver of any term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. No term, warranty, covenant or condition of this Agreement shall be deemed to have been waived by Port unless in writing.

25. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement. All exhibits attached to this Agreement are incorporated herein by reference. The exhibits attached to this Agreement are: Exhibit A – Licenses and Permits; Exhibit B – Scope of Services; and Exhibit C – the Fee Schedule to be attached to Task Orders. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

26. Headings, Captions, and Pronouns. The captions appearing at the commencement of the sections hereof, and in any Section or Subsection, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between the heading, and the Section or Subsection at the head of which it appears, the Section or Subsection, as the case may be, and not the heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires the substitution.

27. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

28. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

29. Arbitration. Except as otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this Agreement or its breach shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this Agreement. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the County of San Joaquin, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of appropriate jurisdiction. The parties shall each be responsible for an equal share of the arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege that could otherwise be claimed by a party shall be available to and may be claimed by a party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this Section 29. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

IN WITNESS WHEREOF, the Port and Service Provider have executed this Agreement as of the date first written above.

STOCKTON PORT DISTRICT

x _____

By: Kirk DeJesus
Title: Port Director

SERVICE PROVIDER

x _____

By: _____
Title: _____

**EXHIBIT A
LICENSES AND PERMITS HELD BY PERSONNEL WHO SHALL
PROVIDE SERVICES ON PORT WORK**

SAMPLE A AGREEMENT

**EXHIBIT B
SCOPE OF SERVICES**

SAMPLE AGREEMENT

**EXHIBIT C
FEE SCHEDULE**

SAMPLE AGREEMENT