

CONSULTING SERVICES CONTRACT

THIS CONTRACT (the “Contract”) is made and entered into effective as of the September 9, 2020 (“Effective Date”) by and between the Port of Corpus Christi Authority of Nueces County, Texas (“Authority”), Nueces County, Texas (“County”) and The Perryman Group (“Consultant”), each a “Party” and collectively as “Parties”. Authority and County are referred to collectively herein as the “Project Sponsors”.

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: The Project Sponsors hereby engage the Consultant and the Consultant hereby accepts its engagement for the purpose of providing to the Project Sponsors 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 October 7, 2020 (the “Deadline”), unless the Project Sponsors agree to extend the Deadline for good reason; provided, however, that the Project Sponsors 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 the Project Sponsors and the Consultant for performance of the Services until the Project Sponsors provide the Consultant execution of this Contract and receipt by the Project Sponsors 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 Project Sponsors, (2) the date on which, in the opinion of the Project Sponsors, all of the Services have been rendered, (3) the date on which this Contract is terminated by the Project Sponsors 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: The Project Sponsors shall each designate Contract Representatives who will, on behalf of each Project Sponsor, 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 Representatives.

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

For the Authority:
Jeffrey Pollack
Director of Planning
222 Power Street
Corpus Christ, Texas 78401
(361) 885-6230
E-mail: jpollack@pocca.com

For the County:
Barbara Canales
Nueces County Judge
901 Leopard Rm 207
Corpus Christi, Texas 78401
(361) 888-0391
E-mail: barbara.canales@nuecesco.com

The Project Sponsors may change the Contract Representatives 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 County: Barbara Canales
Nueces County Judge
901 Leopard Rm 207
Corpus Christi, Texas 78401
(361) 888-0391
E-mail: barbara.canales@nuecesco.com

If to the Consultant: M. Ray Perryman
The Perryman Group
510 N. Valley Dr., Suite 300
Waco, TX 76710
E-mail: info@perrymangroup.com

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 Project Sponsors, provided all 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 Project Sponsors, or bring onto the Project Sponsors' premises, or induce the Project Sponsors to use any third party's confidential or proprietary information;

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

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 the Project Sponsors at any time during the Term. Consultant will not undertake to commit the Project Sponsors to any course of action in relation to a third

party unless expressly requested and authorized to do so by the Project Sponsors 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.

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 **SIXY-EIGHT THOUSAND DOLLARS** (\$68,000). Consultant will obtain the approval of the Contract Representatives relative to incurring travel and other expenses before incurring such costs. The Project Sponsors have each agreed to pay fifty percent (50%) of the compensation owed to Consultant, including reasonable travel expenses and other out of pocket expenses. In no event shall either Project Sponsor be liable for the other Project Sponsor's failure to pay the compensation (including expenses) owed to Consultant under this Contract.

8. INVOICE PROCEDURE AND PAYMENT: Consultant shall submit invoices monthly to the Project Sponsors for work performed during the preceding calendar month. Such invoices shall be due and payable by each of the Project Sponsors on or before thirty (30) days from receipt by the Project Sponsors. 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 either Project Sponsor'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 the Contract Representatives 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 the Project Sponsors. 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 the Project Sponsors. 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 the Project Sponsors and their agents, servants, representatives, employees, officers, directors, and Port Commissioners (collectively, the “Project Sponsor 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 Project Sponsor 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 Project Sponsor Parties for the negligent acts of the Project Sponsor 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, no Party shall be liable or responsible to any 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 any 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 PARTITES: 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 the Project Sponsors at the time Consultant submits the signed contract to the Project Sponsors.

13. ASSIGNMENT: No Party may assign or transfer its interest in this Contract without the written consent of the other Parties.

14. SUSPENSION OR TERMINATION: The Project Sponsors may suspend or terminate this Contract for convenience with seven (7) days prior written notice to Consultant of such action. Upon termination of this Contract in accordance with this paragraph, the Project Sponsors 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 the Project Sponsors.**

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 senior executives of the Project Sponsors

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. STAFFING: Consultant will designate in writing to the Project Sponsors its representative, and the manner in which it will provide staff support for the project, which must be approved by the Project Sponsors. Consultant must notify the Contract Representatives of any change in personnel assigned to perform work under this Contract, and the Contract Representatives have the right to reject the person or persons assigned to fill the position or positions. The Contract Representatives 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 Project Sponsors, in writing, for approval.

17. 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 Project Sponsors' property upon completion. This provision does not apply to pre-existing proprietary information of Consultant, subconsultants, and/or suppliers.

18. 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 Project Sponsors and constitutes confidential information of the Project Sponsors. 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 Contract Representatives 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 the Project Sponsors of the requirement and the affected information.

19. FORCE MAJEURE: No 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 Project Sponsors.

20. 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 any 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.

21. 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.

22. OPEN RECORDS: The Project Sponsors are governmental bodies subject to the requirements of the Texas Public Information Act (Texas Government Code, chapter 552), and as such the Project Sponsors are 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 Project Sponsors as required by the Texas Public Information Act or any other applicable law will not expose the Project Sponsors (or any party acting by, through or under the Project Sponsors) to any claim, liability or action by the Consultant.

23. 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 the Project Sponsors or the Consultant’s objectivity in performing the services under this Contract is or might otherwise be impaired. Consultant agrees to immediately notify the Project Sponsors of any actual or potential Organizational Conflict of Interest that develops during the term of this Contract. Consultant agrees that the Project Sponsors may terminate this Contract immediately if it becomes aware of any Organizational Conflict of Interest during the term of the Contract.

24. SECTION 2270.002, TEXAS GOVERNMENT CODE: To the extent required by Section 2270.002 of the Texas Government Code, Consultant 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.

25. 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.

26. 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.

27. 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”

NUECES COUNTY

By: _____
Name: Barbara Canales
Title: Nueces County Judge
Date: _____

“County”

ATTEST:

Kara Sands, Nueces County Clerk

THE PERRYMAN GROUP

By: _____
Name: M. Ray Perryman
Title: President & CEO
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:

- A. Conduct necessary research and compile requisite data for this analysis, such analysis to include Census tracts 63 and 64. The firm's extensive historical databases and proprietary models and systems will be utilized in this effort. It is assumed that the Project Sponsors will provide any readily available information which may be helpful in this assessment as well as needed input information such as data regarding construction and potential operations at the location (some initial information has been provided). A list will be provided upon project initiation.
- B. Utilize information provided and supplemental research as needed to develop estimates of the direct benefits of the large mixed-use development including both the North Beach area and the Old Nueces County Courthouse. The effects of external grant funding will be fully incorporated into the analysis. It is anticipated that major channels of impacts to be examined include
 - a. Construction and renovation, and
 - b. Ongoing operations.
- C. The US Multi-Regional Impact Assessment System will be used to estimate total economic effects of these channels of economic stimulus.
 - a. Results will be provided for several measures of overall performance including Total Expenditures, Gross Product, Personal Income, and Employment.
 - b. Effects by major industry group will also be included.
 - c. Models used will reflect the unique industrial structure of the Nueces County/Corpus Christi study area.
- D. A perspective on general fiscal effects on the State and local governmental entities (as a group) will be provided.
- E. Prepare a report setting forth the results of this assessment including a description of the methods used.

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 fee basis; provided, however, that the total fee for services rendered under this Contract will not to exceed **\$68,000** without the Project Sponsors' written approval. Services provided by Consultant will be billed as specified in this 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.

The Project Sponsors agree 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. The Project Sponsors will also reimburse the Consultant for pre-approved out of pocket expenses incurred by the Consultant in performing the Services. The Consultant shall submit proper documentation of any such approved travel expenses and out of pocket expenses to the Project Sponsors from time to time, and such costs and expenses shall be billed to the Projects Sponsors at Consultant's actual cost.

Upon completion of the Services, Consultant shall submit to the Project Sponsors detailed invoices for all services performed and out of pocket expenses incurred, if any, pursuant to this Contract. The Project Sponsors 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 out of pocket expenses incurred.

The Project Sponsors agree to the following payment terms:

- **Authority will pay Consultant \$32,300 in fees plus direct out of pocket expenses not to exceed \$1,700. Authority will pay Consultant 50% of its share of the fees (\$16,150) within seven (7) days of the Effective Date. Authority will pay Consultant 50% of its share of the fees (\$16,150) upon completion of the Services, plus 50% of the total approved out of pocket expenses, if any. The total amount paid by Authority to Consultant (fees plus expenses) will not exceed \$34,000.**
- **County will pay Consultant \$32,300 in fees plus direct out of pocket expenses not to exceed \$1,700. County will pay Consultant 50% of its share of the fees (\$16,150) within seven (7) days of the Effective Date. County will pay Consultant 50% of its share of the fees (\$16,150) upon completion of the Services, plus 50% of the total approved out of pocket expenses, if any. The total amount paid by County to Consultant (fees plus expenses) will not exceed \$34,000.**

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	\$500,000 per Occurrence
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Automobile liability insurance coverage will include all owned, non-owned, and hired vehicles.

E.	Professional Liability	\$1,000,000
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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 Project Sponsors, its Port Commissioners, officers and employees ("Project Sponsor Parties"). Additionally, the Project Sponsor Parties shall be designated as Additional Insureds either by a blanket additional insured or a specific endorsement on all policies, except for Worker's Compensation, Employer's Liability, and Professional Liability.

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.

Without limiting any of the other obligations or liabilities of Consultant, Consultant shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance as shown herein. As an alternative, Consultant may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Consultant's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Consultant agrees to provide workers' compensation for Subcontractors and their employees. Consultant shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Consultant must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. The Project Sponsors shall be entitled, upon request and without expense, to receive copies of these certificates.

The minimum insurance required may be increased periodically upon request by the Project Sponsors 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.