

**PORT OF GALVESTON
REQUEST FOR DISCUSSION**

BUSINESS ITEM

SUBJECT: Discuss and Consider Contract for Ryan Brannon Legislative Consultant for the Galveston Wharves

DISCUSSION: This item was placed on the agenda for Trustee discussion and consideration.

Ray

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is entered into as of November 25, 2022 (the "Effective Date"), by and between the **BOARD OF TRUSTEES OF THE GALVESTON WHARVES** ("Client" or "Board of Trustees"), a separate utility of the City of Galveston, Texas (the "City"), and **W. R. BRANNAN & ASSOCIATES, LLC**, a Texas limited liability company doing business as **THE BRANNAN FIRM** ("Consultant").

WHEREAS, Client is interested in retaining state advocacy and legislative services including, but not limited to, representation, information, professional advice, performing research, establishing legislative contacts, developing and pursuing specific legislation, and providing associated staff services for the Port of Galveston (the "Port") and issued a Request for Proposals 2022-008 for such services (the "RFP");

WHEREAS, Consultant is a lobbying and government relations firm authorized to do business in Texas, and is qualified to provide professional lobbying services through its registered lobbyists in accordance with Texas law and to perform the services specified by Client in the RFP; and

WHEREAS, Client has determined that (1) Consultant is the most highly qualified provider of the requested services based on demonstrated competence and qualifications, (2) that this Agreement represents a fair and reasonable price for the requested services, and (3) Consultant provided the most services responsive to the RFP at the lowest price; and

NOW, THEREFORE, for and in consideration of the sum of \$10 and other valuable consideration, Client and Consultant agree to the following Terms, covenants, and conditions:

1. Performance by Consultant

Consultant agrees to perform lobbying and legislative consulting services as directed and agreed to by the Board of Trustees (the "Services"). The Services may include, but are not necessarily limited to the Scope of Services ("Scope of Services") attached hereto as Exhibit A and incorporated herein by reference. For the avoidance of doubt, the Consultant will not be providing legal services to Client as part of the Services.

2. Payment for Services

a. **Fees, Price Protection.** Client agrees to pay Consultant for the Services at the rate of \$4,000.00 per month during the term of this Agreement which is inclusive of any and all fees and expenses incurred by Consultant pursuant to this Agreement including but not limited to the costs of rendering the Services, unless otherwise agreed in writing between the parties.

b. **Invoices.** Consultant shall invoice Client monthly for Services rendered on a monthly basis. Client will pay for those Services and expenses within 30 days of receipt of a properly completed invoice. Notwithstanding any provision of this Agreement to the contrary, the total of

all consideration to be paid to Consultant under this Agreement must not exceed the sum of \$48,000.00.

3. Obligations of Consultant

a. *Services Performed on Client's Premises.* Consultant will ensure that its employees and agents will, whenever on Client's premises, obey all reasonable instructions and directions issued by Client, and observe Client's environmental, health, and safety policies, including any alcohol and substance abuse policies, as may be communicated to Consultant from time to time.

b. *Key Person.* The parties agree that Ryan Brannan is essential to Consultant's performance of the Services offered pursuant to this Agreement and should this person no longer be active on Client's account or be employed by Consultant for whatever reason, Client will have the right to terminate this Agreement on 30 days' written notice.

c. *Consultations, Reports.* Consultant agrees to make available Consultant's representative, who shall be mutually agreed upon by Consultant and Client, for periodic meetings to review the progress of all work under this Agreement. Consultant also shall prepare and submit to Client a written report each week setting forth interactions with the entities identified in Section 1. above, progress of Consultant's specific projects under this Agreement, and any other events or matters relevant to the Services, as well as copies of all documents relating to the Services performed by Consultant. Such reports will be in a format mutually agreeable to Client and Consultant. Consultant shall also provide such other reports as Client may request from time to time.

4. Obligations of Client

Client agrees to make available to Consultant, upon reasonable notice, such information, data, and documentation regarding its facilities and infrastructure and other matters related to the Services as may reasonably be required by Consultant to complete the Services.

5. Term

a. *Primary Term.* The Primary Term of this Agreement shall be for one (1) year, commencing on the Effective Date and terminating on November 24, 2023.

b. *Renewal Terms.* [Intentionally Deleted].

c. *Termination by Either Party.* Either party, upon giving notice to the other party, may terminate this Agreement:

i. if the other party or its employees, consultants or other agents violate any provision of this Agreement and the violation is not remedied within 30 days of party's receipt of written notice of the violation;

ii. if at any time after the commencement of the Services, Client, in its reasonable judgment, determines that such services are inadequate, unsatisfactory, or substantially non-conforming to the specifications, descriptions, warranties, or representations contained herein and the problem is not remedied within 30 days of the party's receipt of written notice describing the problem; or

iii. at any time in the event the other party terminates or suspends its business, becomes a debtor in any bankruptcy or insolvency proceeding under Federal or state statute, or becomes subject to direct control by a court appointed receiver or other similar authority.

In the event that any of the above events occurs to a party, that party shall immediately notify the other party of its occurrence.

d. **Obligations upon Expiration or Termination.** Upon expiration or termination of this Agreement, Consultant shall promptly return to Client all information, files, documentation, media, related material, and any other material that is owned by Client, as well as any work product in progress. Expiration or termination of this Agreement shall not relieve either party of its obligations regarding Confidential Information under Section 6 below.

6. Confidential Information

a. **Non-Disclosure.** Consultant agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information (defined below) of Client except and only to the extent necessary to perform under this Agreement. Consultant agrees to secure and protect the Client's Confidential Information in a manner consistent with the maintenance of Client's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants or other agents who are permitted access to Client's Confidential Information to satisfy its obligations under this Section.

b. **Definition.** "Confidential Information" means a party's information, not generally known by non-party personnel, used by the party and which is confidential or proprietary to the party or the disclosure of which would be detrimental to the party. Confidential Information includes, but is not limited to, the following types of information (whether or not reduced to writing or designated as confidential):

i. work product resulting from or related to Services performed under this Agreement;

ii. a party's computer software, including documentation;

iii. a party's internal personnel, financial, marketing and other business information and manner and method of conducting business;

iv. a party's security status, strategic operations, and other business plans and forecasts;

v. confidential information provided by or regarding a party or a party's employees, customers, vendors and other contractors; and

vi. the existence of a contractual relationship between the parties.

7. Indemnification and Insurance

Consultant INDEMNIFIES and HOLDS HARMLESS Client, its trustees, officers, agents and employees, and the City, its officers, agents and employees, against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of Consultant, its agents, invitees, servants and employees upon the property of Client, or arising or resulting from any defective or unsafe condition for which Consultant is responsible, or of any apparatus, equipment or other property of Consultant, or in any other manner arising out of any action or inaction of Consultant relating to the performance of Services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause.

8. Injunctive Relief

It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by Consultant of this Agreement and that any such breach by Consultant will cause Client great and irreparable injury and damage. Accordingly, Consultant agrees that Client shall be entitled, without waiving any additional rights or remedies otherwise available to Client at law or in equity or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by Consultant.

9. Assignment and Subcontracting

a. *Consent Required.* Consultant may not assign or subcontract the whole or any part of this Agreement without Client's prior written consent.

b. *Subcontracting.* Any subcontract made by Consultant with the consent of Client must incorporate by reference all the terms of this Agreement. Consultant agrees to guarantee the performance of any subcontractor used in performance of the Services.

10. Other Provisions

a. *Status as Independent Contractor.* Consultant and Client are contractors independent of one another and neither party's employees will be considered employees of the other party for any purpose. This Agreement does not create a joint venture, partnership, or other joint business enterprise, and neither party has the authority to bind the other to any third party. Notwithstanding any language in this Agreement to the contrary, Consultant is solely responsible

for directing control over its employees, and any subcontractors and agents and the manner and means of performance of the Services.

b. **Applicable Law and Forum.** This Agreement will be governed and construed in accordance with the laws of the State of Texas without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state district courts sitting in Galveston County, Texas.

c. **Notices.** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery:

If to Client: Board of Trustees of the Galveston Wharves
123 Rosenberg, 8th Floor
Galveston, Texas 77550
Fax: (409) 766-6171
Attn.: Port Director/CEO

With a copy to the Legal Counsel to the
Board of Trustees of the Galveston Wharves:

Mr. Anthony P. Brown
McLeod, Alexander, Powel & Apffel, P.C.
802 Rosenberg Ave.
P. O. Box 629
Galveston, TX 77553
Facsimile: (409) 762-1155

If to Consultant: W. R. Brannan & Associates, LLC (d/b/a The Brannan Firm)
1108 Lavaca Street, Suite 110.200
Austin, TX 78701
Fax: _____
Email: ryan@brannanllc.com
Attn.: Ryan Brannan

d. **Waiver.** No waiver by Client of any breach by Consultant of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

e. **Entire Agreement.** This Agreement, including Exhibit A, constitutes the entire agreement between Consultant and Client with respect to the subject matter hereof.

f. **Modifications.** No modification of this Agreement shall be effective unless in writing and signed by both parties.

g. **Severability.** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

h. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and the same document. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants and conditions of this Agreement.

i. **No Personal Liability of Board.** The members of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES, whether singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

j. **Limitation of Liability of the City.** The City of Galveston is never liable to respond in damages or make indemnity, or contribution, or payment of any character from any source other than the property, and the income and revenues arising from the property, under the management and control of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES by reason of, due to or caused by a breach of this Agreement.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have executed this Agreement as of the Effective Date.

[Signatures Appear on Following Page]

CLIENT:

**BOARD OF TRUSTEES OF
THE GALVESTON WHARVES**

By: _____
Rodger E. Rees, Port Director/CEO

Approved as to form:

Anthony P. Brown,
Counsel to the Board of Trustees
of the Galveston Wharves

CONSULTANT:

**W. R. BRANNAN & ASSOCIATES, LLC
(D/B/A THE BRANNAN FIRM)**

By: William Ryan Brannan
Name: William Ryan Brannan
Title: Principal

SCHEDULE OF EXHIBITS

Exhibit A – Scope of Services