

Contract **XXXXXXXX** between
San Diego County Regional Airport Authority
And
BUSINESS NAME
For
[ENTER CONCISE DESCRIPTION OF SERVICES]

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SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Contractor Agreement

This Agreement is made by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, and [CONTRACTOR'S BUSINESS NAME, TYPE OF ENTITY]. The Parties agree:

1. **DEFINITIONS:** As used within this Agreement, the following terms shall have the meanings as set forth below:

Accounting Records: any and all documents relating to invoices, costs, payment, settlement, or supporting documentation of Contractor relating to this Agreement.

Agreement: this Service and Consulting Agreement including all exhibits and attachments.

Airport: the San Diego International Airport.

Audit Period: the period of time from commencement of the term of the Agreement to the third anniversary of the Authority's final payment under the terms of this Agreement.

Authority: the San Diego County Regional Airport Authority, a local governmental entity of regional government, acting through its President/CEO for purposes of this Agreement.

Compensation: all monetary consideration provided Contractor pursuant to this Agreement including fees and Reimbursable Expenses.

Contractor: [CONTRACTOR'S BUSINESS NAME & BUSINESS TYPE] and any employees, agents, or subcontractors of Contractor.

Design Professional: any of the following professions:

- *Architects* licensed pursuant to Chapter 3 of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter;

- *Landscape Architects* licensed pursuant to Chapter 3.5 of Division 3 of the Business and Professions Code, and a business entity offering landscape architect services in accordance with that chapter;

- *Professional Engineers* registered pursuant to Chapter 7 of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter; and

- *Professional Land Surveyors* licensed pursuant to Chapter 15 of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

DHS: the U. S. Department of Homeland Security.

Expenses: expenditures made by Contractor in the necessary and reasonable performance of this Agreement. Expenses include costs for travel, facilities, equipment, personnel, tools, and other materials. See "Reimbursable Expenses" below.

FAA: the Federal Aviation Administration.

Non-design Professional: all professions other than Design Professionals as defined above.

Parties: the Authority and Contractor collectively.

President/CEO: the President/CEO of San Diego County Regional Airport Authority or his/her designee.

Proprietary Information: all confidential, personal, proprietary and trade secret information and materials of the Authority, or of its Board, officers, employees, or of its suppliers, vendors or customers. Proprietary Information includes, without limitation, any: (a) information, ideas or materials of a technical or creative nature, such as designs and specifications, computer source and object code, and other materials and concepts relating to the Authority's intellectual property rights; (b) information, ideas or materials of a business nature, such as non-public financial information; information regarding profits, costs, marketing, purchasing, sales, customers, suppliers, contract terms, employees and salaries; development plans; business and financial plans and forecasts; (c) all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints and other documents or materials, or copies thereof, received by Contractor in the course of Contractor's rendering of the Services to the Authority, including, without limitation, records and any other materials pertaining to the Work Product; and (d) information, ideas and opinions of a personal nature, such as the thoughts, impressions, personal histories and goals of Authority employees; and (e) the terms and conditions of this Agreement.

Reimbursable Expenses: those Expenses which are identified in "Exhibit B" to this Agreement as reimbursable by the Authority.

Services: all actions, assistance, and deliverables described in "Exhibit A" to this Agreement.

SSI Information: all documents, data, reports, drawings, specifications and other works, whether complete or incomplete, in oral, written, graphic or electronic form related to airport or airline security or contingency plans, security incident response plans, security directives, or any other such documents or materials protected by 49 CFR Part 1520 or defined in Part 1521.

TSA: the Transportation Security Administration, or any successor to the TSA.

Work Product: all documents, data, reports, drawings, specifications, and other works, including copies prepared by Contractor pursuant to this Agreement, whether complete or incomplete and whether in oral, written, graphic, or electronic form.

2. **TERM**: The term of this Agreement commences [DATE] and ends [DATE], with an option for [NUMBER AND TIME FRAME] extensions, which may be exercised at the sole discretion of the [AUTHORITY OR PRESIDENT/CEO].
3. **SCOPE OF WORK**: Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the Authority with the Services set forth in "Exhibit A" entitled "Scope of Work", which is attached to and incorporated in this Agreement.
4. **COMPENSATION**:
 - A. **General**: Authority shall pay Contractor for the Services provided in accordance with the terms set forth in "Exhibit B", entitled "Compensation and Payment Schedule", which is attached to and incorporated in this Agreement. Authority shall make good faith efforts to pay Contractor all undisputed amounts within thirty (30) days of Authority's approval of Contractor's invoice submitted in accordance with Section 5 of this Agreement. The payments specified in "Exhibit B" shall be the only compensation to which Contractor shall be entitled under this Agreement. Authority has no obligation to expend the amount of monies designated as Maximum Amount Payable nor to pay any amount in excess of the Maximum Amount Payable.

- B. **No Guarantee of Compensation:** Should this Agreement be an “on-call” agreement, Authority makes no guarantee to Contractor as to the amount of Contractor-provided Services will be requested by the Authority or the amount of compensation that will be provided Contractor pursuant to this Agreement. Under no circumstances, shall Contractor or any of its subcontractors be entitled to or compensated for any direct or indirect loss arising from or relating to Authority’s failure to authorize performance of Services under this Agreement. Said direct and indirect loss includes, but is not limited to, loss of expected profits, business overhead, loss of productivity, and loss of opportunity to work on other projects.
- C. **Staff Assignments:** Contractor agrees to assign only competent personnel to perform Services according to the reasonable and customary standards of training and experience in the relevant field. Where Services are provided on an hourly rate basis, Contractor agrees to use personnel with the lowest hourly rate to competently provide Services. Failure to assign competent personnel will constitute grounds for immediate termination and/or refusal to compensate Contractor for such Services.
- D. **Staff Continuity:** Contractor will use its best efforts to ensure continuity of personnel assigned to perform Services. Contractor will obtain Authority’s prior approval before reassigning any full-time staff.
- E. **Expenses:** Unless expressly provided otherwise in “Exhibit B”, Contractor shall bear all expenses required to perform Services pursuant to this Agreement.
5. **INVOICES:** Contractor shall submit monthly invoices, or at such other intervals as otherwise directed by Authority, describing the Services and Reimbursable Expenses for which payment is sought in accordance with Sections 3 and 4 of this Agreement. Invoices shall be in a form acceptable to the Authority and include the following:
- A. **Documentation of Services:**
- 1) Contractor shall submit monthly invoices that identify by name of each person or persons who provided Services during the period covered by the invoice. Unless otherwise agreed to by the Authority, the invoice, below each person’s name, will describe with specificity each task the person performed and the date(s) that the person performed the task. Following the description of each task performed, the invoice will list (i) the amount of time by date that the person expended on the task, (ii) the documents associated with the task that the individual prepared, (iii) the compensation requested for the tasks provided by the person, and (iv) the basis of calculation of the compensation. For each identified task, the invoice will identify the authorized Reimbursable Expenses incurred by the individual in performance of each task. Identification of Reimbursable Expenses will include the documentation specified below.
 - 2) Contractor shall provide written notice to the Authority when the total compensation expended under the Agreement reaches 75% of the total compensation allowed. If requested in writing by the Authority, each invoice shall state the total compensation and expense for each task billed as of the date of the statement and provide a running total of all compensation and expenses invoiced from the beginning of the Agreement year in which Contractor began providing Services to the date of the current invoice.
- B. **Documentation of Reimbursable Expenses:**
- 1) Reimbursable Expenses, if any, for which Contractor may request reimbursement are set forth specifically in “Exhibit B”.

- 2) Reimbursable Expenses under \$25.00: Contractor shall attempt in good faith to attach to each invoice all necessary documentation and receipts to support expenses under \$25.00.
- 3) Reimbursable Expenses over \$25.00: Contractor shall attach to each invoice detailed, itemized receipts to support expenses over \$25.00. In no event will the Authority reimburse Contractor for expenses over \$25.00 that are not supported by necessary written detailed documentation with itemized receipts.

C. **Declaration To Accompany Each Invoice:** Invoices submitted shall contain the following signed certification at the end of the billing statement:

“I hereby certify under penalty of perjury that the above bill is just and correct according to the terms of the Agreement between Contractor and the Authority and that payment has not been received.

By: _____”

D. **Invoice Address:** Unless otherwise agreed by the Parties, all invoices shall be sent to the Authority at the address specified below:

San Diego County Regional Airport Authority
Accounts Payable
P.O. Box 82776
San Diego CA 92138-2776

6. **ACCOUNTING RECORDS:** During the Audit Period, the Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Authority or any other authorized government entity, including but not limited to the FAA and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers and records of the Contractor which are pertinent to this Agreement for the purpose of making audit examination, excerpts and transcriptions. The Authority or any other authorized government entity, including but not limited to the FAA and the Comptroller General of the United States or any of their duly authorized representatives, may audit Contractor’s Accounting Records. Such audit(s) shall be conducted at reasonable times. Contractor shall maintain all Accounting Records for the entire length of the Audit Period, and shall fully cooperate with any such audit(s). Contractor shall maintain all records within the County of San Diego. If Contractor fails to maintain all records within the County of San Diego, Contractor agrees to reimburse Authority for reasonable expenses involved in traveling to the records storage site. Except as provided in this section, the cost of an audit shall be borne by the Authority. However, if the audit reveals a discrepancy of more than two percent between the Compensation requested by Contractor in accordance with this Agreement and the compensation determined by the audit. Contractor shall pay the cost of the audit as reasonably determined by the Authority.
7. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement. If Contractor fails to competently perform Services within the time periods specified in “Exhibit A”, or, if no time periods are specified, within a reasonable time period, Authority may terminate this Agreement pursuant to the terms of this Agreement.
8. **ASSIGNMENT OR TRANSFER PROHIBITED:** This Agreement is a personal services agreement between the Parties. Contractor may not in any manner, by operation of law or otherwise, assign, hypothecate, encumber or transfer this Agreement or any of the rights, duties or obligations under this Agreement, in whole or in part, without the express, prior written consent of the Authority. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without such consent, shall be voidable at the sole discretion of Authority and grounds for termination pursuant to the terms of this Agreement.

9. TERMINATION:

- A. If the President/CEO, in his/her sole discretion, becomes dissatisfied with Contractor's performance under this Agreement, the President/CEO may terminate this Agreement by giving written notice to Contractor. Such termination shall be effective immediately on delivery of such notice to Contractor.
- B. In addition to any other rights and remedies allowed by law and this Agreement, either party may terminate this Agreement with or without cause by giving thirty (30) days prior written notice. Such termination shall be effective on the date specified in the written notice.
- C. Contractor shall cease performing Services on the effective date of termination and Contractor shall have no further rights under this Agreement except as expressly provided herein. The Authority shall have all rights and remedies provided by law.
- D. Upon termination of this Agreement, Contractor may be compensated in accordance with "Exhibit B" only for Services actually performed and accepted by Authority. Contractor shall not be entitled to any compensation for contractual damages, including, but not limited to expected lost profits, office overhead, loss of productivity, lost opportunity to work on other projects or any other consequential or incidental damages arising from the termination of this Agreement.
- E. If the termination is due to the failure of the Contractor to fulfill the obligations, the Authority may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Authority for any additional cost occasioned to the Authority thereby. If, after notice of termination for failure to fulfill the obligations in this Agreement, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Authority. In such event, compensation to the Contractor shall be determined in accordance with subsection D, above
- F. Upon termination of this Agreement, Contractor shall deliver immediately to the Authority all property belonging to the Authority, whether given to Contractor by the Authority or prepared by Contractor in the course of rendering the Services, including, but not limited to, all Work Product then in progress, including all material in Contractor's possession that contains Proprietary Information or SSI Information and any copies thereof, whether prepared by Contractor or others. Following termination, Contractor shall not retain any written or other tangible (including machine-readable) material containing any Proprietary Information or SSI Information.

10. PROPRIETARY INFORMATION & SSI INFORMATION OF AUTHORITY OR TSA:

- A. **General:** Contractor's Services may involve access to and creation of Proprietary Information or SSI Information.
- B. **Restrictions on Use and Disclosure:** During the term of this Agreement and thereafter, Contractor shall: (a) hold and use Proprietary Information or SSI Information in strict confidence and solely for the benefit of Authority and not for the benefit of Contractor or any third party; (b) not copy or use any Proprietary Information, except as necessary to perform Services; and (c) not disclose or otherwise make available any Proprietary Information or SSI Information to any third party unless first authorized in writing by the Authority.
- C. **Restrictions on References to Authority:** Contractor shall not represent in any way that Authority endorses or supports Contractor or Contractor's activities without the prior

written consent of Authority. Contractor is prohibited from making any representations regarding the relationship between Contractor and Authority without the prior written consent of Authority. Contractor shall not make any representations about Authority or use the Authority's name or the name of any of its Board Members, employees, or agents in documents or material generated by Contractor without the Authority's prior written consent.

D. **Indemnity:** Contractor shall hold harmless and indemnify Authority for the payment of any civil penalties assessed Authority by the TSA or DHS because of Contractor's unauthorized release or divulging of any SSI Information.

11. **AUTHORITY OWNERSHIP OF SERVICES AND WORK PRODUCT:** Authority shall own all Services, including, but not limited to Work Product, prepared pursuant to this Agreement. Ownership includes all rights attendant to ownership, including rights of copyright, patent, and intellectual property rights. Contractor, at its own cost and expense, shall deliver all Work Product to Authority when requested by Authority. With prior written consent of Authority, Contractor may retain limited copies of Work Product, but only for purposes expressly authorized in Authority's consent. Work Product, including copies retained by Contractor, may not be shown to any other public or private person or entity unless expressly authorized in writing by Authority.

12. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor in the performance of this Agreement and shall act in an independent capacity and not as an officer or employee of the Authority. Contractor shall have no authority to act as an agent on behalf of the Authority unless specifically authorized to do so in writing. Authority shall have no liability for Contractor's actions and performance and assumes no responsibility for taxes, bonds, payments, or other commitments, implied or express, that may be made by or for Contractor. Contractor shall purchase all bonds and pay all taxes required for the performance of Services. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Contractor and Authority or between Contractor and any other entity or party or cause Authority to be responsible in any way for the debts or obligations of Contractor or any other party or entity.

13. **SUBCONTRACTORS:** Contractor agrees that all of its subcontractors shall be subject to the prior written approval by the Authority. Contractor shall remain responsible to the Authority for any and all Services and obligations required under this Agreement, whether performed by Contractor or its subcontractor(s). Any subcontractor(s) employed by Contractor shall be independent contractors and not agents of the Authority. Contractor shall ensure its subcontracts and other agreements made pursuant to this Agreement with subcontractor(s) include all applicable requirements set forth by this Agreement, including, but not limited to, sections entitled: "Insurance Requirements", "Indemnification", and "Conformance with Rules and Regulations".

14. **INSURANCE REQUIREMENTS:**

A. Contractor shall procure, at its expense, and keep in full force and effect at all times during the term of this Agreement, the types and amounts of insurance specified in "Exhibit C", entitled "Insurance Requirements for Contractor", which is attached hereto and incorporated by reference herein. The specified insurance shall include and insure Authority, its Board and all its officers, employees, and agents, their successors and assigns, as additional insured's, against the areas of risk associated with the Services as described in "Exhibit A" with respect to Contractor's acts or omissions in the performance of this Agreement, its operations, use, and occupancy of the Airport, and other related functions performed by or on behalf of Contractor in, on or about Airport.

- B. Each specified insurance policy (other than Worker's Compensation and Employers' Liability and fire and extended coverage's) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under insured's Agreement with the Authority."
- C. All such insurance shall be primary and non-contributing with any other insurance held by Authority where liability arises out of or results from the acts or omissions of Contractor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Contractor. Such policies may provide for reasonable deductibles and/or retentions acceptable to the President/CEO based upon the nature of Contractor's operations and the type of insurance involved.
- D. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, its Board and all its officers, employees, and agents, their successors and assigns, as insured's is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Contractor in Contractor's operations at Airport or in the performance of this Agreement. In the event Contractor fails to furnish Authority with evidence of insurance and maintain the insurance as required, Authority upon ten (10) days prior written notice to comply, may, but shall not be required to, procure such insurance at the cost and expense of Contractor, and Contractor agrees to promptly reimburse Authority for the cost thereof plus fifteen (15%) percent for administrative overhead. Payment shall be made within thirty (30) days of invoice date.
- E. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with Authority. If such coverage is canceled or reduced, Contractor shall, within fifteen (15) days of such cancellation or reduction of coverage, file with Authority evidence that the required insurance has been reinstated or provided through another insurance company or companies.
- F. Contractor shall provide proof of all required insurance and related requirements to Authority either by production of: the actual insurance policy(ies); or a Certificate of Insurance in a form acceptable to the Authority; or a broker's letter acceptable to the President/CEO in both form and content in the case of foreign insurance syndicates, or other written evidence of insurance acceptable to the President/CEO. The documents evidencing all required coverage's shall be filed with Authority prior to Contractor performing Services or occupying the Airport. The documents shall contain (i) the applicable policy number, (ii) the inclusive dates of policy coverage's, (iii) the insurance carrier's name, address and telephone number, (iv) shall bear an original signature of an authorized representative of said carrier, and (v) shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker, and carrier providing such insurance.
- G. Authority and Contractor agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by the President/CEO who may, thereafter, require Contractor, on thirty (30) days prior written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said President/CEO deems to be adequate.

- H. All insurance policies required herein shall have a minimum Best financial rating of A minus 7.
- I. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §§1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Contractor agrees, except where exempted, to provide Authority proof of said insurance by and through a surplus line broker licensed by the State of California at the address specified below:

San Diego County Regional Airport Authority
Risk Management Department
P.O. Box 82776
San Diego, CA 92138-2776

15. INDEMNIFICATION:

- A. **Non-Design Professionals:** In addition to the provisions of the section entitled “Insurance Requirements”, Contractor shall indemnify, hold harmless and defend the Authority, its Board, officers, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys’ fees and court costs, arising out of the performance of the Services described herein, caused by any act or omission of Contractor and/or any of its subcontractors, employees, agents, officers and directors, except where caused by the sole negligence or willful misconduct of the Authority.
- B. **Design Professionals:** Notwithstanding the provisions of the above, the following provision shall apply to Contractors that are Design Professionals when providing professional design services to Authority. In addition to the provisions of the section entitled “Exhibit C - Insurance Requirements for Contractor”, Contractor shall indemnify, hold harmless and defend the Authority, its Board, officers, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys’ fees and court costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor and/or any of its subcontractors, employees, agents, officers and directors.

16. CONFORMANCE WITH RULES AND REGULATIONS:

- A. Contractor agrees to abide by any and all:
 - 1) Applicable rules, regulations, resolutions, policies, codes, orders and restrictions which are now in force or which may be hereafter adopted by the Authority with respect to operation of the Airport;
 - 2) Orders, directives, or conditions issued, given or imposed by the President/CEO with respect to the use and operation of the Airport; and
 - 3) Applicable laws, ordinances, statutes, rules, regulations, or orders of any federal, state, county, municipal or other governmental entity, exercising jurisdiction over the Airport.
- B. Contractor acknowledges that it has reviewed and accepts the SDIA Security Instructions posted on the Authority’s website at www.san.org. If TSA, imposes a fine or penalty on the Authority for Contractor's non-compliance with federal laws and or TSA rules and regulations, then Contractor shall reimburse and indemnify the Authority for the entire amount of the fine or penalty.

17. **PREVAILING WAGE:** State prevailing wage rates may apply to work performed under this Agreement. State prevailing wage rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, §§1720, 1720.2, 1720.3, 1720.4 and 1771. Contractor is solely responsible to determine if state prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.
18. **BANKRUPTCY:** In the event Contractor commences a proceeding under the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Contractor's interest under this Agreement, this Agreement shall at the option of the Authority immediately terminate and all rights of Contractor hereunder shall immediately cease and terminate. If during the term of this Agreement, Contractor files for bankruptcy protection, it covenants and agrees to serve the Authority with a copy of the court filing documents within five (5) days thereafter.
19. **LICENSES AND PERMITS:** Contractor shall possess all licenses, permits, qualifications, and approvals of whatever nature legally required for Contractor to perform the Services under this Agreement. Contractor represents and warrants that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any and all licenses, permits, and approvals that are required for Contractor to practice its profession and/or perform the Services.
20. **CONFLICT OF INTEREST:** Contractor is not now a party to, and during the term of this Agreement shall not enter into, any contract or agreement that will create a conflict of interest with its duties to the Authority under this Agreement.
21. **ENTIRE UNDERSTANDING:** This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, discussions, obligations, and rights of the Parties regarding this Agreement. Contractor acknowledges that there is no other written or oral understanding between the Parties. No modification, amendment, or alteration of this Agreement shall be valid or enforceable against the Authority unless it is in writing, properly approved and executed by all Parties.
22. **NON-DISCRIMINATION:** Contractor agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of race, color, gender, religious creed, sex (including pregnancy or child birth), age, national origin, ancestry, sexual orientation, physical or mental disability, medical condition including genetic characteristics, veteran status, marital status, family care status, or any other considerations made unlawful by federal, state or local law in performance of this Agreement. If the use provided for in this Agreement allows Contractor to offer accommodations or services to the public, such accommodations, or services shall be offered on fair and reasonable terms.
23. **PARTIAL INVALIDITY:** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
24. **NOTICES:**
- A. **Notice:** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery on the date that personal delivery is accomplished; (b) by overnight courier upon the date of signature verification of receipt; or (c) by certified or registered mail, return receipt requested, upon signature verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing:

If to the Authority: President/CEO

San Diego County Regional Airport Authority
P. O. Box 82776
San Diego, California 92138-2776

If to Contractor: [BUSINESS NAME]
Attn: [NAME]
[ADDRESS]
[CITY, STATE AND ZIP CODE]

B. **Effectiveness:** Contractor agrees that Notice from the President/CEO shall be effective as to the Contractor as if it were executed by the Board or by Resolution of the Board.

25. INTERPRETATION:

A. **Section Headings:** Section headings in this Agreement are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.

B. **Fair Meaning:** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.

C. **Two Constructions:** If any provision in this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

D. **Governing Law:** This Agreement and all of its terms and conditions shall be construed, interpreted and applied in accordance with, governed by, and enforced under the laws of the State of California.

E. **Venue:** Notwithstanding applicable provision of 28 U.S.C. §1391 or of California Code of Civil Procedure §394, the Parties agree that the venue in all matters arising out of this Agreement shall be the Superior Court of California, County of San Diego.

F. **Gender:** The use of any gender shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

G. **Integrated Agreement:** The Parties agree that this Agreement and any documents to which it refers contain the whole agreement between the Parties relating to the terms and conditions by which Contractor is to provide Services. The Parties further agree that this Agreement supersedes all previous understandings and agreements between the Parties regarding such terms and conditions. Each party to this Agreement acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance that is not set out in this Agreement or in any documents to which it refers, that was made before the execution of this Agreement. Each party waives all rights and remedies which, but for this provision, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance. However, nothing in this provision shall limit or exclude any liability for willful misconduct or fraud. The Parties further agree that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

H. **Other Agreements Not Affected:** Except as specifically stated herein, this Agreement and its terms, conditions, provisions and covenants shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties under or by reason of any other agreement between the Parties.

26. JOINT AND SEVERAL LIABILITY: If Contractor is a limited liability company ("LLC"), partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Contractor under this Agreement shall be joint and several, and each

member, general partner, joint venturer, party or entity of Contractor shall be jointly and severally liable for all obligations.

27. **WAIVER**: Waiver by either party of any breach by the other party of any one or more of the terms or conditions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other term or condition of this Agreement. Failure on the part of either party to require full and complete compliance by the other party with any of the terms or conditions of this Agreement shall not be construed as changing the terms or conditions or preventing full enforcement of other provisions to this Agreement.
28. **COST OF LITIGATION AND/OR ADMINISTRATIVE ACTIONS - ATTORNEY FEES**: If any action, whether an action in litigation or in an administrative action, brought by a party to this Agreement and arising out of or traceable to any rights, privileges, or obligations bestowed by this Agreement, including but not limited to breach of any provision of this Agreement, the Parties agree that the prevailing party shall be entitled to and the non-prevailing party shall be bound to pay all reasonably incurred costs associated with the action. The Parties agree that all reasonably incurred costs associated with the action include, but are not limited to attorney fees, costs of legal research incurred in preparing documents filed with the court or administrative body, expert witness fees, and exhibits used in presenting the prevailing party's case to the court, jury or administrative body.
29. **AUTHORITY'S RIGHT TO CONTRACT WITH OTHERS**: The rights granted Authority by this Agreement are not exclusive, and Authority reserves the right to enter into other agreements covering the same or similar Services that are described in the Agreement.
30. **EFFECT OF DEBARMENT OF CONTRACTOR ON EXISTING CONTRACTS**: For the entire term of this Agreement, Authority reserves the right to immediately terminate this Agreement in the event that Contractor or any subcontractor is debarred from contracting or providing services by the Authority, the federal government, or by any other California governmental entity.
31. **PROHIBITION OF BENEFITS**: Contractor is familiar with the Authority's prohibition against receipt of benefits by Authority personnel as set forth in Authority Code §2.10. The Authority's Code is posted on the Authority website at www.san.org. Contractor agrees not to offer any Authority personnel any benefit prohibited by said Code. The offer or giving of any benefit prohibited by the Authority Code shall constitute a material breach of this Agreement by Contractor. In addition to any other remedies the Authority may have in law or equity, Authority may terminate this Agreement for breach as provided herein.
32. **FEDERAL AVIATION ADMINISTRATION REGULATIONS**:
- A. **Civil Rights Act of 1964, Title VI**: During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:
- 1) Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
 - 2) Nondiscrimination. The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or

indirectly in the discrimination prohibited by §21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

- 3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 4) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5) Sanctions for Non-compliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
 - b) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- 6) Incorporation of Provisions. The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Authority to enter into such litigation to protect the interests of the Authority and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. [49 CFR Part 21; AC 150/5100-15].

- B. Airport and Airway Improvement Act of 1982, §520 - General Civil Rights Provisions:** The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire /lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a

purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964. [Airport and Airway Improvement Act of 1982, §520; Title 49 77 123; AC 150/5100-15, Paragraph 10.c].

C. Disadvantage Business Enterprises:

- 1) Contract Assurance (§26.13) - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Authority deems appropriate.
- 2) Prompt Payment (§26.29) – Pursuant to 49 CFR Part 26, §26.29 and in conformance with the California Public Contract Code, the Contractor shall pay each subcontractor under this Agreement for satisfactory performance of their subcontractor work no later than ten (10) days after receipt of each progress payment. Within sixty (60) days of satisfactory completion of all work required of the subcontractor, the Contractor shall release all retainage payments withheld from subcontractors. Any delay or postponement of payment among parties may take place only for good cause, with the Authority’s prior written approval. The Contractor shall pay to the subcontractor a penalty of two percent (2%) of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorneys’ fees and costs. The Contractor will not be paid by the Authority for work performed by a subcontractor unless and until the Contractor ensures that the subcontractors are promptly paid for the work they have performed by signing an affidavit attesting to this fact. This clause applies to both DBE and non-DBE subcontractors. [49 CFR Part 26].
- 3) The Contractor hereby assures that it will include the above provisions in all subcontracts and cause subcontractors to similarly include said provisions in further subcontracts.

D. Lobbying and Influencing Federal Employees:

- 1) No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, “Disclosure of Lobby Activities,” in accordance with its instructions. [49 CFR Part 20, Appendix A].

E. Rights to Inventions: All rights to inventions and materials generated under this Agreement are subject to regulations issued by the FAA and the Authority under which this Agreement is executed. [49 CFR Part 18.36(i)(8); FAA Order 5100.38].

F. Trade Restriction Clause:

- 1) The Contractor or subcontractor, by submission of an offer and/or execution of this Agreement, certifies that it:
 - a) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
 - b) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
 - c) has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.
- 2) Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the FAA may direct through the Sponsor cancellation of the Agreement at no cost to the Government.
- 3) Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.
- 4) The Contractor shall provide immediate written notice to the Authority if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance was placed when entering into the Agreement. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct through the Authority cancellation of the Agreement or subcontract for default at no cost to the Government.
- 5) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 6) This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, §1001. [49 CFR Part 30.13; FAA Order 5100.38].

- G. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The Contractor certifies, by submission of this proposal or acceptance of this Agreement that neither it nor its principals is presently debarred, suspended,

proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal. [49 CFR Part 29; FAA Order 5100.38].

H. **Clear Air and Water Pollution Control:** Contractors and subcontractors agree:

- 1) That any facility to be used in the performance of the Agreement or subcontract or to benefit from the Agreement is not listed on the Environmental Protection Agency ("EPA") List of Violating Facilities;
- 2) To comply with all the requirements of §114 of the Clean Air Act, as amended, 42 U.S.C. §1857 et seq. and §308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in §114 and §308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- 3) That as a condition of the award of this award of this Agreement, the Contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the Agreement is under consideration to be listed on the EPA List of Violating Facilities;
- 4) To include or cause to be included in any construction contract or subcontract which exceeds \$ 100,000 the aforementioned criteria and requirements. [49 CFR Part 18.36(i)(12); §306 of the Clean Air Act; §508 of the Clean Water Act].

I. **Affirmative Action Program:** Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or gender be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Contractor assures that it will require its covered subcontractors to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their subcontractors as required by 14 CFR Part 152, Subpart E.

J. **Airport Development:** The Authority reserves the right to further develop or improve the landing area as it sees fit, regardless of the desires or view of Contractor and without interference or hindrance.

K. **Repair of Airport:** The Authority reserves the right but shall not be obligated to Contractor to maintain and keep the landing area in repair and all its facilities as well as the right to direct and control all activities of Contractor in this regard.

L. **Subordination:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of airports.

M. **Right of Air Navigation:** The Authority reserves for itself, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein covered by this Agreement. This public right of flight shall include the right to cause any noise inherent in the operation of

any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the airport.

- N. **14 CFR Part 77:** Contractor agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction, modification or alteration of any present or future building or structure is planned for the premises related to this Agreement.
- O. **Obstructions:** Contractor, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on Authority land above the mean sea level elevation of 50 feet. In the event the aforesaid covenants are breached, the Authority reserves the right to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Contractor.
- P. **No Interference:** Contractor agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Contractor.
- Q. **Exclusive Rights:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the Federal Aviation Act of 1958 (49 U.S.C. §40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).
- R. **49 CFR Part 23:** This Agreement is subject to the requirements of the U.S. DOT's Regulations, 49 CFR Part 23. Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or gender in connection with the award or performance of any agreement covered by 49 CFR Part 23. Contractor agrees to include these provisions in any subsequent agreements that it enters and cause those businesses to similarly include the statements in further agreements.

33. SIGNATURES:

- A. **Signature of Parties:** It is an express condition of this Agreement that it shall not be complete or effective until signed by Authority and by Contractor.
- B. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

DATE:

NAME:
TITLE: President/CEO

APPROVED AS TO FORM

DATE:

NAME:
TITLE: General Counsel

If your corporation has a seal, please affix.

CONTRACTOR
[BUSINESS NAME]

DATE:

SIGNATURE: _____
NAME: _____
TITLE: _____

By my signature above, I, **[NAME]**, **[TITLE]** of **[BUSINESS NAME]**, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the organization with authority to obligate the organization.

EXHIBIT A – SCOPE OF WORK

A-1. Purpose: The Authority is entering this Agreement to obtain Services needed to **[SPECIFY THE PURPOSE AND INTENT FOR WHICH THE CONTRACTOR IS BEING HIRED.]**

A-2. Scope of Contractor's Responsibilities, Contractor- Provided Services, and Contractor-Provided Deliverables:

A. Specified Services: **[WITH EACH SERVICE & DELIVERABLE IDENTIFIED BELOW, SPECIFY THE STANDARD OF PERFORMANCE.]**

- 1.
- 2.
- 3.

B. Additional Services: If and when Authority requests Contractor to provide services in addition to those specified above, Contractor shall develop a work plan detailing the specific tasks to be completed and providing a detailed not-to-exceed budget for performing such tasks. Contractor shall not perform any Additional Services until Authority has issued a written notice-to-proceed with the execution of the work plan. Contractor will not be authorized to perform or invoice Authority for any work not specifically authorized in the Authority's notice-to-proceed.

A-3. Schedule for Delivery of Contractor-Provided Services and Deliverables:

- A.
- B.
- C.

A-4. Non-financial Obligations of Authority:

- A.
- B.
- C.

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EXHIBIT B – COMPENSATION & PAYMENT SCHEDULE

B-1. Compensation for Services:

- A. For Specified Services.** Contractor shall be compensated for the performance of Specified Services identified in “Exhibit A”. Contractor shall be paid upon completion, to Authority’s satisfaction, of all Specified Services set forth in “Exhibit A” of this Agreement.
- B. For Additional Services.** Contractor’s compensation for Additional Services shall be as mutually agreed to by the Parties prior to Contractor providing Additional Services.

B-2. Reimbursable Expenses: **[IF NONE, STATE SO.]** In accordance with Sections 4 and 5 of the Agreement, Contractor shall be reimbursed for the following expenses:

- A. Travel-Related Expenses:** All Travel Related Expenses must be pre-approved by Authority. Contractor may be reimbursed for the following travel related expenses:
1. Air Transportation. Contractor may be reimbursed for the price of airline tickets if the expense is actual, reasonable, and directly related to the performance of Services required under this Agreement. Reimbursement shall be limited to the cost of the lowest coach fare available.
 2. Lodging. Contractor may be reimbursed for lodging if the expense is actual, reasonable, and directly related to the performance of Services required by this Agreement.
 3. Other Travel-Related Expenses. Contractor may be reimbursed for the cost of other actual, reasonable, and necessary travel expenses subject to the limitations of the prior authorization provided by Authority.

B. Other Reimbursable Expenses: **[SET FORTH HERE ANY OTHER REIMBURSABLE EXPENSES.]**

1. Subcontractor Expenses: Authority will reimburse Contractor the actual and necessary compensation plus ten percent (10%) that Contractor pays to a Subcontractor for providing services in accordance with a proposal approved by the Authority. Such reimbursement shall not exceed the line-item budget for Subcontractor-provided services as set forth in the Authority-approved proposal.
2. Out of Pocket Expenses. When authorized by the Authority in advance, Authority will reimburse Contractor for actual, reasonable, and necessary out-of-pocket expenses incurred in providing Services. The Authority shall not compensate Contractor for out-of-pocket expenses that were not approved in advance by the Authority.

B-3. Schedule for Delivery of Contractor-Provided Services and Deliverables:

B-4. Payment Schedule:

[For each milestone in the Schedule for Contractor-Provided Service and Deliverable, specify what compensation Contractor to receive “upon completion and acceptance by Authority.”]

B-5. Total Maximum Amount Payable: The total maximum amount payable shall not exceed **(VALUE)** Dollars (**\$VALUE**) over the entire term of the Agreement.

EXHIBIT C – INSURANCE REQUIREMENTS FOR CONTRACTOR

SAMPLE

Contractor shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels, and types of insurance:

- C-1. Commercial General Liability** (including, without limitation, Contractual Liability, Personal and Advertising Injury, and Products/Completed Operations coverage's written on an "occurrence," not "claims made" basis): two million dollars (\$2,000,000) combined single limit.
- A. The deductible or self-insured retention on this Commercial General Liability policy shall not exceed five thousand dollars (\$5,000) unless previously approved by Authority in writing.
 - B. The Commercial General Liability policy shall be endorsed to include Authority, its agents, officers, and employees as additional insured's in the form as required by Authority.
 - C. The coverage provided to Authority, as an additional insured, shall be primary.
- C-2. Commercial Automobile Liability:** Covering Owned, Non-Owned, and Hired Automobiles written on an "occurrence," not "claims made", basis in the amount of two million dollars (\$2,000,000) combined single limit for bodily injury and property damage. If Contractor drives on the secured airfield side of the Airport, then Contractor's coverage shall be written on an "occurrence," not "claims made", basis in the amount of ten million dollars (\$10,000,000) combined single limit for bodily injury and property damage.
- C-3. Worker's Compensation and Employer's Liability:** In the amounts required by California State law, but not less than one million dollars (\$1,000,000) Employer's Liability. Such coverage shall include a waiver of subrogation endorsement in favor of Authority.
- C-4. Professional Liability Insurance:** If Contractor provides professional Services, then Contractor shall provide coverage in the amount of one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) aggregate.

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