

STATE OF TEXAS §

COUNTY OF HARRIS §

**CONSULTANT SERVICES AGREEMENT  
FOR  
A HOTEL AND CONFERENCE CENTER**

This Agreement is made and entered into by and between the CITY OF SEABROOK, a home rule municipality situated in Harris County, 1700 First Street, Seabrook, Texas, (hereinafter referred to as "CITY") and DP CONSULTING, Inc. a Texas corporation with registered office at 10700 Richmond Avenue, Suite 321, Houston, Texas 77042, (hereinafter referred to as "CONSULTANT").

**ARTICLE I  
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall assist CITY to locate a hotel and conference center in CITY, by preparing an independent study to evaluate the market justification of developing a hotel and conference center market in CITY, as referenced in the attached Exhibit "A", Scope of Services, subject to the controlling terms and conditions herein.

**ARTICLE II  
DESCRIPTION OF SERVICES**

CONSULTANT'S services hereunder shall include the following:

- A. All services described by Exhibit "A".
- B. CONSULTANT shall work closely with the City Manager of CITY, and appropriate City officials and perform any and all related tasks required by the CITY in order to fulfill the purposes of this Agreement.
- C. CONSULTANT shall deliver all data, reports and documents which result from its services to the City Manager in such form as is satisfactory to the CITY.
- D. The services will be conducted on a step-by-step basis as authorized by the City Manager. The services to be rendered by the CONSULTANT may be limited or modified by the City Manager. The City Manager may authorize a phase to be completed and then terminate the agreement by not authorizing any of the remaining phases.

**ARTICLE III  
PERFORMANCE OF SERVICES**

CONSULTANT and its employees or associates shall perform all the services under this Agreement when authorized by the City Manager. CONSULTANT represents that all its employees or associates who perform services under this Agreement shall be fully qualified and competent to perform the services described herein and in Exhibit "A".

The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by the CONSULTANT under this Agreement.

**ARTICLE IV  
TERM**

The term of this Agreement shall begin on the last date of execution of the Agreement. CONSULTANT understands and agrees that time is of the essence. All services, written reports and other data are to be completed and delivered to CITY as provided in Exhibit "A", unless an extension of time is approved by CITY, based upon good reasons presented by CONSULTANT or for delays or suspensions due to circumstances that the CONSULTANT does not control.

**ARTICLE V  
PAYMENT FOR SERVICES**

In consideration of the services to be performed by CONSULTANT under the terms of this Agreement, CITY shall pay CONSULTANT a flat fee of \$19,500 plus data expenses of \$475, for a total of \$19,975 for services actually performed a fee as provided in Exhibit "A", unless other conditions necessitate additional services, which must be authorized in advance in writing by CITY. The amount shown on Exhibit "A" includes all fees and all expenses to be incurred by CONSULTANT, including travel. All services shall be performed to the satisfaction of the City Manager and CITY shall not be liable for any payment under this Agreement for services which are unsatisfactory and which have not been previously approved by the City Manager/CITY.

**ARTICLE VI  
CONFIDENTIAL WORK**

No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by or assembled by CONSULTANT under this Agreement shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of the City Manager. CONSULTANT understands that the CITY has specific marketplace interests in evaluating the competitive market for securing a hotel/conference center in Seabrook and the actual or potential harm if Consultant's work product/information is disclosed to 3<sup>rd</sup> parties and CITY competitors.

**ARTICLE VII  
OWNERSHIP OF DOCUMENTS**

Upon acceptance or approval by CITY, all reports, information and other data, given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use except that CONSULTANT'S reports nor their contents may be referred to or quoted in any registration statement, prospectus, loan or related 3<sup>rd</sup> party agreement where the CITY is not a

party without CONSULTANT'S prior written consent. CONSULTANT may make copies of any and all documents for its files but shall maintain confidentiality consistent with this Agreement.

## **ARTICLE VIII CONSULTANT'S LIABILITY**

Approval of CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, agents or associates for the accuracy and competency of their designs, reports, information, and other documents or services nor shall approval be deemed to be the assumption of such responsibility by CITY for any defect, error or omission in the documents prepared by CONSULTANT, its employees, agents or associates.

## **ARTICLE IX INDEMNITY**

*To the extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY, its officers, agents and employees from and against all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting from CONSULTANT'S breach of any of the terms of provisions of this Agreement, or by any other negligent act, omission or defect connected with the performance of the work, provided that such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, or violation of any copyright or patent, and (b) is caused by any negligent act or omission of CONSULTANT, anyone directly or indirectly employed by CONSULTANT or its Subcontractors, or anyone for whose acts CONSULTANT or its Subcontractors may be liable, regardless of whether such claim, damage, loss or expense is caused in part negligently or otherwise, by a party indemnified hereunder. This provision shall not apply to any liability resulting from the sole negligence of the CITY, its officers and employees, and in the event of joint and concurrent negligence of both the CONSULTANT and CITY, responsibility and indemnity shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defense of the parties under Texas law. The provisions of this paragraph are for the sole benefit of the parties hereto and shall not create any rights in third parties or waive any right to governmental immunity.*

## **ARTICLE X CONTRACT PERSONAL**

This Agreement provides for personal or professional services, and the CONSULTANT shall not assign this Agreement, in whole or in part, without the prior written consent of CITY.

This Agreement gives no rights or benefits to anyone other than CITY and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of CITY and CONSULTANT.

## **ARTICLE XI INDEPENDENT CONTRACTOR**

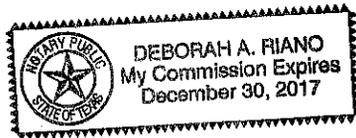
In performing services under this Agreement, the relationship between CITY and CONSULTANT is that of independent contractor, and CITY and CONSULTANT by the execution of this Agreement do not change the independent status of CONSULTANT. No term or provision of this Agreement or act of CONSULTANT in the performance of this Agreement shall be construed as making CONSULTANT the agent, servant, or employee of CITY.

(CONSULTANT)

STATE OF TEXAS           §  
COUNTY OF HARRIS   §

**BEFORE ME**, the undersigned authority, on this day personally appeared David Parker, President of DP Consultant, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of DP Consulting Inc., and that he executed the same as the authorized act of said DP Consulting, Inc. for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 6 day of MAY, A.D., 2016.



Deborah A. Riano  
Notary Public in and for the State of Texas

**ARTICLE XII  
VENUE**

The obligations of the parties to this Agreement are performable in Harris County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Harris County, Texas.

**ARTICLE XIII  
APPLICABLE LAWS**

This Agreement is made subject to the provisions of all applicable State and federal laws. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. It is understood and agreed that the source of funds to be used by CITY to discharge its payment obligations are derived from City of Seabrook Hotel Occupancy Tax Fund.

**ARTICLE XIV  
ENTIRE AGREEMENT**

This Agreement along with the attachments embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement. **To the extent that there is a variance or conflict between this Agreement and Exhibit "A" and related exhibits attached hereto, the terms of this Agreement shall be controlling.**

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by CITY, signing by and through its City Manager, duly authorized to execute same and by CONSULTANT, acting through its duly authorized officials.

"CITY"

By: \_\_\_\_\_  
Gayle Cook, City Manager

"CONSULTANT"  
DP CONSULTING, INC.

By: \_\_\_\_\_  
David Parker, President

