

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

For Airport Security Services

THIS AGREEMENT, made and entered into this _____ day of _____, 20____ (“Effective Date”), by and between SIOUX FALLS REGIONAL AIRPORT AUTHORITY, hereinafter referred to as “Airport”, and _____, a Company organized and incorporated in the State of _____, hereinafter referred to as “Contractor”.

Contractor shall provide professional services for Security Services at the Sioux Falls Regional Airport. Said services shall be in accordance with the Scope of Work as required in the Request for Proposals (RFP) - Exhibit A, attached hereto.

WITNESSETH:

The parties hereto agree as follows:

1. TERM: This Agreement shall begin on the Effective Date and remains in effect for *Five* (5) years from the Effective Date, unless terminated under the terms of this Agreement.
2. SERVICES: The Airport agrees to retain Contractor as an independent contractor, and Contractor agrees to act in this capacity to perform the services outlined in Exhibit A attached hereto and incorporated by reference herein, upon the terms and conditions set forth in this Agreement. Contractor agrees to perform the services contracted for herein in a professional and business-like manner and in accordance with the format which may be prescribed by the Airport. The Airport may modify or change the scope of work upon prior written notice to Contractor.
3. COMPENSATION: The Airport will pay Contractor per the Proposal Cost Submission (Exhibit B), dated _____, 20____, attached hereto. The negotiated fee for said services shall be billed at least _____, but no more often than monthly, after work is completed. The total compensation for this Agreement shall not exceed the sum total on the Proposal Cost Submission.

The Contractor agrees that any work identified during the project as outside of the original Scope of Work shall be discussed with the Airport prior to execution of such work. A separate written scope and fee will be prepared and forwarded to the Airport for consideration. Any work completed by the Contractor outside of the Scope of Work without express written prior approval from the Airport shall be considered incidental.

4. EXPENSES: The Airport shall not be liable to Contractor for any expenses incurred by Contractor for any of its acts except as specifically agreed to and set forth in Exhibit B.

5. PAYMENT:

- A. Contract will be on a monthly, lump sum basis. No additional rates or charges will be allowed for duties covered under this agreement.
- B. Contractor will send its applications for payment monthly to:

Sioux Falls Regional Airport Authority
2801 N. Jaycee Ln.
Sioux Falls, SD 57104

6. TERMINATION & PENALTIES:

- A. If Contractor fails to perform services as set forth herein, failure will result in a warning notice to contractor that identifies the failure and requires the contractor to provide remedies to prevent recurrence.
- B. If Contractor fails to provide the minimum staffing level outlined herein, the monthly payment shall deduct the hours missed by 1.5 times the hourly rate identified in the cost breakdown.
- C. If Contractor has subsequent failures to perform services as set forth herein, or otherwise breaches this Agreement for any reason, contractor will receive a notice of breach and will provide, within two days of notice, remedies to prevent recurrence. Any civil penalties or other fines assessed against the Airport shall be enforced against contractor for payment.
- D. Additionally, if Contractor fails to perform timely services as set forth herein or otherwise breaches this Agreement for any reason and, at the sole discretion of the SFRAA, is determined to present a threat to the security of the Airport, such failure may be a basis for termination of this Agreement by the Airport without advanced notice.
- E. Airport may terminate this Agreement by sixty (60) days' written notice to the Contractor and Contractor may terminate this Agreement by ninety (90) days' written notice; provided, however, the party seeking to terminate this Agreement shall not be in default.
- F. In the event of such termination, the Airport shall pay Contractor for all services rendered and expenses incurred prior to date of termination.

7. COMPLIANCE WITH LAWS: Contractor shall comply with all applicable federal, state, and local laws, regulations and executive orders which are incorporated by reference.

8. DRUG-FREE WORKPLACE: It is the policy of the Airport to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractor, its agents, employees, subcontractors, and successors while on Airport property is prohibited.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: The Contractor certifies, by execution 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 executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.

10. **OWNERSHIP OF WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS:** The Airport shall be the sole owner of any works of authorship, data, software, files, designs, layouts, artwork, drawings, photographs, notes, notebooks, documents, models, materials, processes, inventions, improvements, and discoveries conceived, developed, produced, or provided by it and/or Contractor in connection with this Agreement (the "Work Product"), and the Airport shall be the sole owner of any and all intellectual property rights and other rights in any such Work Product. Contractor hereby assigns all right, title and interest in and to any Work Product Contractor conceives, develops, produces, provides, or contributes to, in connection with this Agreement, including but not limited to any patents, copyrights, mask works, or other intellectual property rights. Contractor further agrees to execute any documents necessary or desirable for perfecting the Airport's ownership of such Work Product and all rights associated therewith. It is expressly agreed and understood that the obligations of Contractor under this Section shall survive the termination of this Agreement.
11. **MATERIALS:** Upon request of the Airport or upon termination or completion of this Agreement, Contractor shall return any materials provided by the Airport. Any materials purchased by Contractor and for which Contractor has been reimbursed shall also be sent to the Airport upon request of the Airport or upon termination or completion of this Agreement.
12. **ENDORSEMENT OF PLANS:** Contractor shall place its written endorsement on all plans, specifications, reports, or documents developed by Contractor.
13. **ASSIGNMENTS:** This Agreement is binding on the parties and their heirs, successors, and assigns. Neither party may assign or transfer its interest, in whole or in part, without the other party's prior written consent.
14. **LEGAL CLAIMS AND ATTORNEY FEES:**
 - A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with Contractor's duties. The Airport and Contractor each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party.

- B. In the event either party requires the services of an attorney in connection with enforcing the terms of this Agreement or in the event suit is brought for the recovery of fees or other sums or charges otherwise payable to Contractor, the prevailing party will be entitled to reasonable attorneys' fees, consultant's fees, witness fees and other costs, both at trial and on appeal.

15. SUBCONTRACTORS AND PROMPT PAYMENT OF SUBCONTRACTORS:

Contractor shall not subcontract any part of its performance under this Agreement without the prior written approval of the Airport. In requesting such approval, Contractor must provide the Airport with the name of the proposed subcontractor, the nature of the services to be performed, and a copy of the proposed subcontract which, at a minimum:

- A. Includes the same information required of Contractor in this Agreement, inclusive of all sections therein, and
- B. Restricts the subcontractor from adding any mark-up to its reimbursable expenses and its all-inclusive billing rates.

If such approval is given, Contractor shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Contractor.

16. TITLE VI ASSURANCES: Contractor, for itself, its agents, employees, subcontractors, and successors, agrees to abide by and comply with all provisions and regulations of Title VI of the Civil Rights Act of 1964, and as said regulations and law may be amended. No person on the grounds of race, color, or national origin may be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination by Contractor, its agents, employees, subcontractors, and successors. In the event of noncompliance with this nondiscrimination provision, Sioux Falls Regional Airport Authority has the right to terminate this Agreement.

The Airport also maintains the right to review any agreements the Contractor has with its subcontractors that perform work as part of this Agreement to ensure its agreements include language that requires compliance with Title VI.

17. ANTI-KICKBACK: No officer or employee of the Airport, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted, or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.
18. STANDARD OF PERFORMANCE: Contractor, in carrying out its responsibilities, acts, and duties, shall observe and meet the standard of an experienced and qualified professional contractor familiar with the industry, performing similar services under similar conditions.
19. ACCESS, APPROVALS and PERMITS: The Airport shall arrange for access to and make all provisions for Contractor to enter Sioux Falls Regional Airport Authority

property as required for Contractor to perform its services. Except as may be provided in individual agreements, the Contractor shall furnish appropriate approvals and permits from all governmental authorities having jurisdiction over the project and such approval and consents from others as may be necessary for completion of the project.

20. **AIRPORT BADGING AND SECURITY:** Each employee of Contractor and its subcontractors must, at all times, wear a badge issued by the Airport while working in an area that requires the badge to be displayed. Contractor shall be responsible for the cost of the initial badges and any replacements thereof.

The Transportation Security Administration may assess fines and/or penalties for Contractor's non-compliance with the provisions of 49 CFR Part 1540 and 1542, as amended from time to time, or by agencies for noncompliance with laws or regulations applicable to Contractor's operations at the Airport. Within 10 days after receiving written notice from the Airport stating the amount of any fine or penalty, Contractor shall reimburse the Airport for any fine or penalty assessed against the Airport because of Contractor's non-compliance with applicable laws or regulations.

21. **MAINTENANCE OF RECORDS:** Contractor shall make available to the Airport's auditor, or his fully authorized representative, all records created as a result of the Agreement including pertinent information which Contractor shall have kept in conjunction with this Agreement and which the Airport may be required by law to include or make part of its auditing procedures, or which may be required for the purpose of funding the service contracted for herein. Contractor agrees to maintain a copy of said records for a minimum of seven (7) years following completion of its services.

22. **CONFLICTS OF INTEREST:** If an actual or potential conflict arises between the Airport's interests and the interests of other client(s) that the Contractor represents, Contractor shall immediately notify the Airport in writing. The Airport shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s) within 10 Business Days after receipt of Contractor's notice. If the Airport issues a non-consent letter, the Airport may immediately terminate this Agreement unless Contractor promptly terminates its representation, potential or otherwise, of the other client(s) whose interests are or may conflict with those of the Airport.

23. **INSURANCE:**

- A. Contractor shall carry Professional Liability insurance coverage, including coverage for job supervision, in the minimum amount of \$2,500,000 per claim and \$5,000,000 in aggregate.
- B. Contractor shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below and insurance shall be placed with companies or underwriters authorized to do business in the State of South Dakota. Failure to obtain and maintain such insurance shall constitute a default under this

Agreement. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage with aircraft exclusion deleted and shall include, but not by way of limitation, bodily injury; property damage; products liability; and contractual coverage. Contractor shall also maintain a vehicular policy insuring any of its vehicular operations on the Airport and the policy shall be issued by a company authorized to do business in the State of South Dakota. Contractor shall promptly, upon execution of this Agreement, furnish to the Airport appropriate certificates of insurance evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than \$1,000,000 combined single limit or split limits equal to and not less than \$1,000,000, for bodily injury and property damage with respect to each occurrence; such limits subject to periodic adjustments. The insurance policies shall not be subject to cancellation except after notice to the Airport by registered mail at least thirty (30) days prior to the date of such cancellation. Where any policy(ies) has/have normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the Airport at least thirty (30) days prior to such expiration. The Airport, its staff, and employees shall be named as additional insured on Contractor's Comprehensive General Liability coverage, with respect to Contractor's use of the Airport and the Premises which are subject of this Agreement. Upon written request by the Airport, Contractor shall permit the Airport to inspect all originals of all applicable policies. Required additional insured language is as follows: "The Airport, its Board Members, agents and employees are additional insured with respect to Liability arising out of the operations of the named insured."

24. INDEMNIFICATION:

- A. The Contractor shall indemnify the Airport, its elected and appointed officials, agents, employees, and representatives (collectively, the "Constituents") from only that portion of any liability that is caused by any negligent act, error, or omission by the Contractor with regard to the professional services it has performed for the Airport, as such liability is finally determined after trial and any appeal thereof. The Airport and the Constituents shall not have comparative fault for selection, administration, monitoring, or controlling the Contractor, or in approving or accepting the Contractor's work. This paragraph shall not nullify, extend, or expand any statute of limitations that is otherwise applicable to any negligence or other claim against the Contractor. This indemnification is not intended to and does not alter or interfere with any duties that the Contractor may have under its insurance agreements, such as the duty to cooperate fully with the insurer in defending any claims, the duty to obtain the consent of the insurer to pay or compromise any claim, or the duty to refrain from prejudicing the insurer's subrogation rights. This indemnification is solely for the benefit of the Airport and the Constituents and no third-party beneficiary or other rights shall be created under this provision.

- B. Contractor hereby agrees to release and hold harmless the Airport and Constituents from any damages to the Contractor caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the Contractor does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Airport, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on the Airport.
- C. Contractor further agrees to hold the Airport and Constituents free and harmless for any claims arising out of the damage, destruction or loss of any or all of Contractor's equipment excluding any claims arising out of the sole negligence of the Airport or its Constituents.
25. **SURVIVAL OF INDEMNITIES:** All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Contractor shall, at the Airport's option, defend the Airport at Contractor's expense by counsel satisfactory to the Airport.
26. **AUTHORIZATION TO PROCEED:** Contractor will not begin work on any of the services listed until the Airport provides written direction to proceed.
27. **FORCE MAJEURE:** Neither the Airport or Contractor shall hold the other responsible for damages nor delay in performance caused by acts of God, pandemic, strikes, lockouts, accidents, or other events beyond the control of the other.
28. **SERVICES & DELIVERABLES:** Unless this Agreement is terminated as specified herein by reason of substantial failure of either party to fulfill its obligations under this Agreement, Contractor shall perform all services specified in this Agreement. The Airport is not obligated to pay any fees or expenses which specifically involve negligent acts or omissions on the part of Contractor.
29. **SUBMISSION OF AGREEMENT:** The submission of this document for examination and negotiation does not constitute an offer or Agreement. This document shall become effective and binding only upon execution and delivery hereof by an authorized representative of each the Airport and Contractor. No act or omission of any officer, employee or agent of the Airport shall alter, change or modify any of the provisions hereof.
30. **RELATIONSHIP OF THE AIRPORT AND CONTRACTOR:** The parties hereto specifically agree that Contractor is an independent contractor, and not an employee, servant, or partner of the Airport. The provisions of this Agreement shall be construed to permit the Airport to direct and control the end result of Contractor's efforts, not the methods by which they are accomplished. The Airport shall not withhold from

compensation paid to Contractor any of the following: income tax, social security, workers' compensation, or unemployment tax. Contractor also acknowledges Contractor and Contractor's employees shall not be eligible for any benefits the Airport provides to its employees, and expressly waives any right to such benefits. In the event a court should decide, notwithstanding this provision, that such sums or benefits are due, or should Contractor be deemed an employee, Contractor agrees to be personally liable for such taxes or sums that may be due thereby and agrees not to be bound by the South Dakota Workers' Compensation Act. This provision shall be binding upon the assigns and administrators of the parties hereto.

31. **APPLICABLE LAW; VENUE; WAIVER OF TRIAL BY JURY:** This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of South Dakota without regard to its choice of law provisions. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in either the United States District Court for South Dakota at Sioux Falls or state circuit court situated in Minnehaha County, South Dakota, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for the purposes of determining such action and waive any right to assert a claim for inconvenient forum. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.
32. **SEVERABILITY:** Should litigation be commenced regarding the enforceability of the provisions of this Agreement, and should a court of competent jurisdiction deem that any of the covenants contained herein are unreasonable with respect to time, geography or otherwise, such covenant shall not be deemed wholly invalid, but the parties agree said court shall have the right and power to reform and reduce the restrictive provisions thereof in order to make it enforceable to the maximum extent permitted by law and the parties hereby authorize and instruct the Court to do so.
33. **CONTRACTOR'S WARRANTIES:** Contractor warrants to the Airport that Contractor, and Contractor's owners and employees are not subject to any non-compete agreement or similar agreement or allegation which would prevent Contractor, its owners and/or employees from providing services to the Airport hereunder or limit the services Contractor may provide for the Airport, and that in performing its obligations under the Agreement, Contractor will not infringe on the rights of any other person for whom Contractor, its owners and employees have provided services (whether as an employee, independent contractor, consultant or otherwise).
34. **ENTIRE AGREEMENT/AMENDMENT IN WRITING:** This Agreement contains the entire agreement of the parties. There are no other promises, inducements, representations or other agreements between the parties except as set forth herein. The terms of this Agreement may be amended only in writing signed by both parties.
35. **COUNTERPARTS/ELECTRONIC SIGNATURES/ELECTRONIC DELIVERY:** This Agreement may be executed in one or more multiple copies or counterparts all of which

shall be deemed one and the same Agreement and all of which shall be deemed originals. Delivery of signatures to this Agreement by any party hereto via electronic means (e.g., “pdf” copies via e-mail, facsimile, or similar method) shall be valid and binding upon such party as the original signature of such party for all purposes hereunder.

Attachments:

Exhibit A: Scope of Work

Exhibit B: Cost Agreement

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written:

Sioux Falls Regional Airport Authority

By: Daniel Letellier
Executive Director

Date: _____

Contractor

Signature: _____

Date: _____

Name: _____

Title: _____