

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT BETWEEN FORT BEND COUNTY
AND BRYAN SMITH**

This Agreement is entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Commissioners Court (hereinafter referred to as “**County**”) and **BRYAN SMITH, dba BPS Professional Services**, an individual doing business in the State of Texas (hereinafter referred to as “**Contractor**”).

WITNESSETH:

WHEREAS, the following agencies comprise the Houston HIDTA Executive Board, Federal Bureau of Investigation, Drug Enforcement Administration, Alcohol Tobacco and Firearms, Immigration & Naturalization Service, Internal Revenue Service, United States Attorney’s Office, Immigration and Customs Enforcement, United States Marshals Service, Fort Bend County Sheriff’s Office, Harris County Sheriff’s Office, Harris County District Attorney’s Office, Jefferson County Sheriff’s Department, Texas Department of Public Safety, Corpus Christi Police Department, Houston Police Department, and Pasadena Police Department, who operate the Houston High Intensity Drug Trafficking Area hereinafter known as the Houston “HIDTA”; and,

WHEREAS, Fort Bend County agrees to act as the facilitator of grant funds awarded by the Office of the National Drug Control Policy for the hiring of an Deputy Director; and,

WHEREAS, Bryan Smith, hereinafter referred to as “Contractor”, has expertise in the area of drug interdiction, intelligence collection/dissemination, special investigations, asset forfeitures, and law enforcement, and has developed special relationships with law enforcement officials in the United States; and,

WHEREAS, the County and Contractor are authorized to enter into this Agreement that meets the approval of the HIDTA Executive Board; and,

WHEREAS, the **County** has determined that this Agreement is for personal or professional services and, therefore, exempt from competitive bidding under Chapter 262, Local Government Code; and,

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereby agree as follows:

**I.
HIRING OF CONTRACTOR**

1.01 It is understood and agreed by the parties that the services referred to in this paragraph will be provided by **Contractor**, and will not be provided to **County** and other HIDTA agencies by any other individual or entity while this contract is in full force and effect.

1.02 Provide professional management and liaison services under the terms and conditions stated, and Contractor hereby agrees and accepts to perform such services.

II. DUTIES

2.01 Contractor shall provide professional administrative services as the Deputy Director of the Houston HIDTA. Contractor shall be responsible to HIDTA Executive Board, Office of National Drug Control Policy (ONDCP) and the Houston HIDTA Director.

2.02 Contractor shall follow the established policies and procedures of HIDTA while performing the services hereinafter enumerated in relation to HIDTA, with such additional duties and responsibilities as may be hereinafter prescribed from time to time by the ONDCP of the Houston HIDTA and will implement directives from the Director and Houston HIDTA Executive Board.

2.03 Contractor agrees to perform the professional services as directed by the HIDTA Executive Board and ONDCP, including, but not limited to, the following:

- a. serving as a liaison between the ONDCP and other HIDTAs throughout the country and the various law enforcement agencies and initiatives within the Houston HIDTA;
- b. reviewing threat assessments/strategies/budget proposals to ensure the initiatives conform to the goals of the national HIDTA program and the overall Houston HIDTA focus;
- c. providing creative input and direction for the HIDTA program;
- d. coordinating, preparing and timely submitting the HIDTA reports required by the ONDCP;
- e. evaluating individual HIDTA-funded initiatives to ensure their focus complies with the target assessment and strategy developed for the overall Houston HIDTA;
- f. developing and maintaining an inventory of all specialized equipment obtained and utilized by the HIDTA;
- g. developing and maintaining procedures for tracking the various law enforcement statistics for all the HIDTA components;
- h. establishing a Houston HIDTA-wide accounting system to track program funding and establish an audit trail;
- i. serving as an independent, interagency mediation resource and liaison for agency

heads and the initiatives' leadership;

- j. maintaining contacts and working with other HIDTA Directors throughout the country to develop and ensure a coordinated national focus for the various HDTAs with shared information and resources as appropriate;
- k. working with DOD groups, national communications companies, other HIDTA groups and local initiative technicians to develop ADP systems which most effectively meet the needs of HIDTA yet remain within the guidelines of various agency headquarters;
- l. reviewing budget submissions and reprogramming requests to ensure integrity of HIDTA-budget expenditures;
- m. coordinating with initiative leaders to avoid duplication of effort through the various HIDTA initiatives and to maximize the use of HIDTA personnel and material resources;
- n. exercising programmatic, administrative and fiscal oversight and support of all HIDTA initiatives and ensuring they are in compliance with the ONDCP/HIDTA Program Guidance and other program requirements, expressly excluding exercising operation control of law enforcement initiatives;
- o. performing additional duties/requirements identified by the Executive Board which must be consistent with ONDCP/HIDTA Program Guidance and deemed necessary to enhance the HIDTA Program;
- p. with the concurrence of the Executive Board, hiring staff personnel for HIDTA, which positions have been approved and funded by the ONDCP;
- q. providing daily supervision, and other requirement management functions for all staff employees of HIDTA if required by the HIDTA Director; and
- r. complying with the Financial and Administrative Guidelines established by the HIDTA Assistance Center dated January 1997, and as hereinafter amended, which are incorporated herein by this reference for all intents and purposes.

III. DATA PRIVACY

All financial, statistical, personal, technical and other data and information related to the work performed by the Contractor, or which becomes available to the Contractor in carrying out this Agreement, shall be protected for and on behalf of HIDTA by Contractor from unauthorized use or unauthorized disclosure.

IV.
LIABILITY INSURANCE

4.01 Contractor shall, during the entire term of this Agreement, keep in full force and effect a policy of general liability insurance in which the limits shall not be less than \$1,000,000 for each claim aggregate. The policy shall name County as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department and a copy of the policy or certification of insurance shall be delivered to County on or before the date of this Agreement.

4.02 Contractor agrees and understands that he shall not be provided legal representation for any claims or causes of actions arising from his performance hereunder. Contractor further agrees to have and retain automobile insurance during the term of this Agreement in an amount sufficient to cover any contingency resulting from this contract.

V.
INDEMNIFICATION

Contractor agrees to indemnify **County** against all demands, suits, actions, legal administrative proceedings, claims, damages and reasonable attorney's fees relating to the performance or non-performance of this Agreement.

VI.
NON-APPROPRIATION OF FUNDS

It is specifically understood and agreed, that in the event no funds or insufficient funds are appropriated by the Office of National Drug Control Policy under this contract on behalf of the County, then the County shall notify the Contractor and the Houston HIDTA Executive Board that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to the County.

VII.
COMPENSATION

7.01 Contractor shall be compensated as follows:

- A. \$11,537.31 per month beginning April 5, 2011 and ending June 30, 2011.
- B. \$630.00 per month for car allowance beginning April 5, 2011 and ending June 30, 2011.
- C. Any additional amounts as authorized by the HIDTA Executive Board, and upon receipt of appropriate documentation in a timely manner to coincide with the Commissioners Court meetings for payment of County invoices and contracts.

7.02 County shall provide all documentation necessary and submit to HIDTA for reimbursement of funds expended under Grant #G11HN0010A.

VIII.
INDEPENDENT CONTRACTOR

In the performance of work or services hereunder, Contractor is deemed an independent contractor and shall not be deemed an employee, agent or servant of the County and shall not be entitled to any privileges or benefits of County employment. **Contractor** agrees that he is an independent contractor. The Contractor shall be solely responsible for the performance of his duties under this Agreement and for all withholding taxes, including all federal, state and local taxes, and all workers' compensation insurance.

IX.
TERM

9.01 This Agreement shall be effective on April 5, 2011 and shall terminate on June 30, 2011. If grant funds are depleted before expiration date, agreement is automatically terminated. Any renewal of this Agreement shall be subject to express written amendment.

9.02 This Agreement may be terminated by either party, with or without cause with thirty (30) days prior written notice. Any and all outstanding invoices and payments shall be made by **County** to **Contractor** within thirty (30) days of termination of this Agreement.

9.03 In the event grant funds are secured for a term to exceed June 30, 2011, this Agreement may be renewed for an additional term, subject to the amount of grant funds secured. Any renewal is subject to written agreement by all parties through a one-page amendment.

X.
MISCELLANEOUS

10.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

10.02 In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.03 Contractor shall not knowingly or intentionally disregard any or all applicable laws, ordinances and codes of the State of Texas, all local governments, and any other entities with local jurisdiction and shall not hold himself out as an employee of Fort Bend County.

10.04 The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

10.05 Any amendments of this Agreement shall be of no effect unless in writing and signed by both parties hereto.

10.06 Neither party may assign any rights nor obligations under this Agreement without the prior written consent of the other party to the assignment. It is understood and agreed by the parties that Contractor will provide the services referred to in this Agreement.

10.07 In the event that performance by Contractor, or any of their obligations under the terms of this Agreement will be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond the control of the parties hereto, that party will be excused from such performance for such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.

10.08 This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all proposals or prior agreements, oral or written, and all other communications, oral or written.

XI. **NOTICES**

11.01 Any and all notices or communications required or permitted under this contract shall be delivered in person or mailed, certified mail, return receipt requested, as follows:

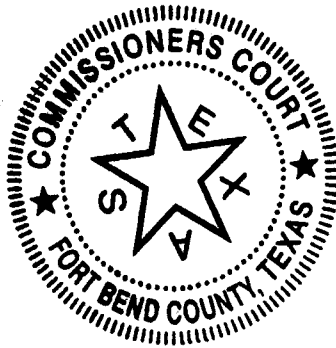
To County: Fort Bend County Judge
 301 Jackson, Suite 719
 Richmond, Texas 77469
 Telephone No. (281) 341-8608

To Contractor: Bryan Smith, dba BPS Professional Services
 Deputy Director
 Houston HIDTA
 15311 Vantage Pkwy West
 Suite 286
 Houston, Texas 77032

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XII.
ENTIRE AGREEMENT

This instrument contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supercedes any prior agreements or understandings, either written or oral, between the parties. Any oral representations or modifications concerning this instrument are of no force and effect excepting a subsequent modification in writing, signed by both parties hereto.



FORT BEND COUNTY

By: _____

Robert E. Hebert, County Judge

ATTEST: _____

Date: 4-5-2011

Dianne Wilson
Dianne Wilson, County Clerk

BRYAN SMITH, dba BPS Professional Services

By: _____

Date: 03/30/11

APPROVED AS TO FORM:

ROY L. CORDES, JR.
COUNTY ATTORNEY

By: _____

Mary E. Reveles, First Assistant

AUDITOR'S CERTIFICATE

I hereby certify to pay the obligation of Fort Bend County within the foregoing agreement in the amount of \$ 36,501.93, based on the availability of grant funds from the Office of National Drug Control Policy.

Ed Sturdivant
Ed Sturdivant, County Auditor