

**SERVICES CONTRACT BETWEEN
THE CITY OF JACKSONVILLE AND
XICON, INC.
MARKET AND BUSINESS ENVIRONMENT ANALYSIS FOR THE
JACKSONVILLE PORT AUTHORITY**

THIS CONTRACT, made and entered into this 30th day of December, 2014 (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and XICON, INC. (the "CONTRACTOR"), a Georgia corporation authorized to transact business in Florida and with its principal offices at 7080 Abercorn Street, Savannah, Georgia 31406.

WHEREAS, the CITY (as the "Buyer") issued a Request for Proposal No.P-04-15 (the "RFP") for certain Market and Business Environment Analysis for the Jacksonville Port Authority services described in the RFP; and

WHEREAS, based on CONTRACTOR'S response to the RFP dated October 31, 2014, consisting of 142 pages (the "Response"), the CITY has negotiated and awarded this Contract to CONTRACTOR;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Performance of Services.** CONTRACTOR shall provide CITY with all of the services and deliverables described in the RFP, the Response and this Contract (collectively, the "Services"). If any services, functions or responsibilities are not specifically described in the RFP, the Response or this Contract but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein. CONTRACTOR shall undertake and perform the Services in accordance with all applicable Federal, State and CITY laws, rules, regulations, policies and *Ordinance Code* provisions.

CONTRACTOR shall have completed its consultation with the Jacksonville Port Task Force as necessary for completion of the Services by no later than March 2, 2015. CONTRACTOR shall provide its draft of the final report no later than February 13, 2015. CONTRACTOR shall provide its final report and complete the Services no later than March 2, 2015.

2. **Compensation.** CONTRACTOR will be paid by the CITY for the Services a flat fee of \$60,000.00 payable upon completion of the performance of the Services.

The CITY shall pay CONTRACTOR within forty five (45) calendar days from the receipt of the invoice. All expenses and fees shall be itemized, include supporting documentation and receipts, and shall include the amount of payment requested, the amount previously paid, the total contract value, and any other such information as may be reasonable and necessary to secure the written approval of the invoice by the CITY's Contract Manager. Each invoice shall contain a statement that it is made subject to the provisions and penalty of

Section 837.06, Florida Statutes.

Any reimbursement for travel or travel related expenses (which shall be included within, and not be in addition to, the \$60,000 compensation paid by CITY), if approved by the Contract Manager, shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, *Ordinance Code* of the CITY.

In the unlikely event that the Services are not complete by the end of the initial term of this Contract, CONTRACTOR shall continue to work for up to sixty (60) days thereafter at no further charge except for direct out-of-pocket expenses as approved by the Contract Manager which will be billed on a monthly basis until the Services terminate.

3. **Maximum Indebtedness.** As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness, for all products and services under this Contract shall be a fixed monetary amount not-to-exceed SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00). All required CITY payments are subject to available CITY funding.

4. **Term.** The initial term of this Contract shall commence on the Effective Date and shall expire on September 30, 2015, unless sooner terminated by either party in accordance with the terms of the RFP. The parties hereto agree that CONSULTANT shall complete its Services as required by the RFP by March 2, 2015.

5. **Contract Documents.** This Contract consists of the following documents which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

- This document, as modified by any subsequent signed amendments
- Any amendments to the RFP
- Specific Information Regarding The RFP (Section 1 of the RFP)
- General Instructions to Respondents (Section 2 of the RFP)
- General Terms and Conditions of Agreement (Section 3 of the RFP)
- Any Purchase Order under the Contract
- The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract.

6. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

Economic Development Officer
Office of Economic Development
117 West Duval Street, Suite 275
Jacksonville, Florida 32202

With a copy to:

City of Jacksonville
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

As to the CONTRACTOR:

Xicon Economics
PO Box 61478
7080 Abercorn Street
Savannah, Georgia 31420
Attn: Dr. Herbert M. Barber, Jr.

7. **Contract Managers.** Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is Ed Randolph, 117 W. Duval Street, Suite 275, Jacksonville, Florida 32202, and the CONTRACTOR'S Contract Manager is Dr. Herbert Barber. Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

8. **CITY'S Right to Terminate Without Cause.** CITY reserves the right to terminate the Contract at any time and for any reason by giving written notice to CONTRACTOR. If the Contract is terminated for convenience as provided herein, CITY will be relieved of all further obligations other than payment specified in Section 2 above. Access to any and all work papers will be provided to the CITY after the termination of the Contract. The parties understand and agree that CONTRACTOR shall not have a reciprocal right to terminate the Contract for convenience; it being understood that CITY's payment for Services forms the consideration for CONTRACTOR not having this right. In the event of CITY's termination of the Contract, CITY (in its sole discretion) may also require CONTRACTOR to provide transitional services as determined by the CITY.

9. **Non-Discrimination Provisions.** As required by Section 126.404, *Ordinance Code*, CONTRACTOR represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of the Contract. CONTRACTOR agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the CITY and any of its employees and officers, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that CONTRACTOR shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the effective date of the Contract. CONTRACTOR agrees that, if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

10. **No Subcontracting.** CONTRACTOR will not subcontract any of the Services under this Contract. Accordingly, the prompt payment provisions required by Chapter 126, Part 6, *Ordinance Code* will not apply.

11. **Contingent Fees Prohibited.** In conformity with Section 126.306, *Ordinance Code*, CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona-fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, CITY shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

12. **Truth in Negotiation Certificate.** Pursuant to Section 126.305, *Ordinance Code*, the execution of the Contract by CONTRACTOR shall be deemed to be a simultaneous execution of a Truth- In-Negotiation Certificate, whereby CONTRACTOR states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further CONTRACTOR agrees that the compensation hereunder shall be adjusted to exclude any significant sums where CITY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

13. **Compliance with Applicable Laws.** CONTRACTOR must comply with all applicable federal, state and local laws, rules, ordinances, regulations and policies as the same exist and as may be amended from time to time, including, but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Sunshine Law);
- Chapter 602, *Ordinance Code* (the Jacksonville Ethics Code);
- Chapter 126, *Ordinance Code* (the Jacksonville Purchasing Code);
- Chapter 55, Part 3, *Ordinance Code* (the Jacksonville Downtown Investment Authority);
- and
- All licensing and certification requirements applicable to performing the Services.

14. **Governing State Law/Severability/Venue/Waiver of Jury Trial.** The rights, obligations and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

15. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of

conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

16. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

17. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.


[Remainder of page left blank intentionally; signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.


ATTEST:

CITY OF JACKSONVILLE

By  
James R. McCain, Jr.
Corporation Secretary

By 
Alvin Brown
Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

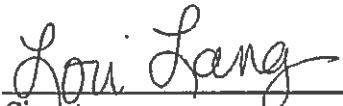

Director of Finance
City Contract Number: 00166
ms

Form Approved:


Office of General Counsel

ATTEST:

XICON, INC.,
a Georgia corporation

By: 
Signature

By: 
Signature

Lori Lang
Type/Print Name

Dr. Herbert Barber
Type/Print Name

Administrative Assistant, HLC
Title

Chief Executive Officer
Title