

CONSULTING AGREEMENT NO.: 16-080
BETWEEN
SPACE FLORIDA
and
S.O. WITT AND ASSOCIATES, LLC.

This **CONSULTING AGREEMENT** ("Agreement") is entered into as of April 18, 2016, (the "Effective Date") by **SPACE FLORIDA** ("SF"), an independent special district, a body politic and corporate, and a subdivision of the State of Florida, whose principal place of business is 505 Odyssey Way, Suite 300, Exploration Park, FL 32953, and **S.O. WITT AND ASSOCIATES, LLC.**, ("Consultant"), whose principal place of business is 604 Sylvia Avenue, Ridgecrest, CA 93555.

WHEREAS, Section 331.302 of the Florida Statutes created SF to foster the growth and development of a sustainable and world-leading aerospace industry in the State of Florida.

WHEREAS, SF is charged with promoting aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.

WHEREAS, Section 331.305 of the Florida Statutes authorizes SF to own, acquire, construct, develop, create, reconstruct, equip, operate, maintain, extend, and improve launch pads, landing areas, ranges, payload assembly buildings, payload processing facilities, laboratories, aerospace space business incubators, launch vehicles, payloads, space flight hardware, facilities and equipment for the construction of payloads, space flight hardware, rockets, and other launch vehicles, and other spaceport facilities and other aerospace-related space-related systems, including educational, cultural, and parking facilities and aerospace-related space-related initiatives.

WHEREAS, the services of Consultant are requested by SF to provide consulting services in connection with SF's Commercial Spaceport Strategy, Shuttle Landing Facility operational transition and development and related efforts.

WHEREAS, the Consultant has the expertise necessary to perform the duties and responsibilities outlined in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Engagement, Scope of Services, Schedule and Deliverables.
 - a. Within the scope of this Agreement, Consultant shall devote its best efforts and such time, attention and energy to the business of SF as is required, and shall be available, with reasonable notice by SF for meetings, travel, and telephone communications for issues relating to this Agreement. Consultant shall promptly respond to all requests from and guidance provided by the President, or any other employee, of SF designated in this Agreement, or in writing by the SF President.

- b. Consultant shall provide the following Scope of Services:
 1. Advisory support to COO to develop strategy for development of Commercial Spaceport
 2. Assist in implementation of SF emergency response program
 3. Support developing concept of simultaneous launch event
 4. Support development of SF commercial operations strategy
 5. Support development of SLF customer capture strategy plan
 6. Act in advocacy role for SF in development of Commercial Spaceport / Market/industry and community relations
 7. Advise of business risk areas: (categories of focus) *Not in any order of importance*
 - Strategic: (economy & locale, technology evolution, competition/marketplace, growth opportunities).
 - Operational: (human resources, information technology, processes)
 - Financial: (liquidity & credit, reporting)
 - Compliance: (Regulatory, Legal)
 - c. Consultant shall provide bi-weekly status review via phone calls, unless otherwise directed, estimated to be 1 to 1-1/2 hours in duration, to the SF Project Manager.
 - d. Consultant shall meet quarterly with SF as directed by SF.
 - e. Consultant shall provide any additional written analysis and recommendations, requirements, and/or strategy related documents or reports as may be requested by the SF Project Manager.
 - f. Consultant shall provide a summary of accomplishments and activities performed as related to the services provided with the monthly invoice.
8. Period of Performance. This Agreement shall commence on the Effective Date and shall remain in full force and effect through April 30, 2017 (the "Expiration Date") unless terminated, or extended, by mutual written agreement by both parties.
9. Compensation and Invoicing.
- a. This Agreement shall not exceed Forty-Eight Thousand Dollars (\$48,000.00) for Consulting Services and Ten Thousand Dollars (\$10,000.00) for SF approved Travel by Consultant for a total not to exceed value of Fifty-Eight Thousand Dollars (\$58,000.00), without prior written amendment to this Agreement.
 - b. Consultant shall be compensated at Two Hundred Dollars (\$200.00) per hour and shall not exceed twenty (20) hours per month without prior written amendment to this Agreement.
 - c. It shall be a material breach of this Agreement for Consultant to submit for payment any statement for services rendered which either (i) overstates the amount of time

actually spent by Consultant pursuant to this Agreement, or (ii) includes time spent by any person not affiliated with Consultant.

- d. **Travel Reimbursement:** Travel Reimbursement is not-to-exceed Ten Thousand Dollars (\$10,000.00), without prior written amendment to this Agreement. All Travel shall be prior approved through the SF Project Manager. Approved travel and associated reimbursement shall be identified as a separate billing line on the monthly invoice and shall be reimbursed in accordance with the Consultant and Vendor Travel Reimbursement Policy attached hereto as “**Attachment A**”.
 - e. The Consultant shall submit a detailed invoice in a form acceptable to SF monthly for all services provided after the Effective Date under this Agreement, plus approved travel expenses. Invoices shall identify a summary of accomplishments and activities performed in conjunction with the Scope of Services and hours billed for such services. All invoices shall be submitted electronically, confirmed returned receipt, to accounting@spaceflorida.gov with a courtesy copy to the Project Manager, Jim Kuzma, at jkuzma@spaceflorida.gov and contracts@spaceflorida.gov.
 - f. All invoices submitted by Consultant and approved by SF shall be paid by SF on a net thirty day schedule. In determining the amount of payment, SF will exclude all costs incurred by Consultant (i) prior to the Effective Date of this Agreement, (ii) after the Expiration Date or termination date of this Agreement, or (iii) costs which are outside of the Scope of Services.
 - g. Any funds paid in excess of the amount to which Consultant is entitled under the terms of this Agreement must be refunded to SF. The balance of unobligated funds, if any, which has been advanced or paid by SF to Consultant under this Agreement must be refunded to SF.
 - h. If Consultant fails to perform the minimum level of service required by this Agreement, SF may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose penalties and sanctions, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.
 - i. The acceptance by Consultant, its successors, or assigns, of the final payment due upon the termination or expiration of this Agreement, shall constitute a full and complete release of SF from any and all claims, demands, or causes of action whatsoever that Consultant, its successors or assigns may have against SF under this Agreement.
10. **Availability of Funds.** All payments to be made by SF under this Agreement are subject to the availability of appropriated funds by the Legislature of the State of Florida. SF shall immediately notify Consultant should funds become unavailable.

11. **Termination.**

- a. SF may terminate this Agreement upon ten days written notice to Consultant.
- b. In the event of termination of this Agreement by SF, SF shall be obligated to pay all approved invoices submitted by Consultant for work performed by Consultant and approved by SF through the date of Agreement termination.
- c. As requested by SF, Consultant agrees to deliver to SF at the termination of this Agreement, or at any other time SF may request, all lists, databases, names, records and other documentation and data, either written or electronic, belonging to SF which Consultant may possess or have under its control.

12. Public Records.

- a. SF, subject to the provisions of Section 288.075, Section 331.326, Chapter 119 of the Florida Statutes, and applicable federal law, must permit public access to all non-confidential, non-proprietary or non-International Traffic in Arms Regulation (ITAR) controlled documents or other materials prepared, developed or received by it in connection with the performance of the obligations under this Agreement.
- b. This Agreement may be unilaterally cancelled for refusal by either party to allow public access to all documents, papers, letters, or other such materials subject to the provisions of Chapter 119 of the Florida Statutes and made or received in conjunction with this Agreement, other than those specified as confidential or exempt information.
- c. To the extent Consultant is acting on behalf of SF as provided under Subsection 119.011(2) of the Florida Statutes, Consultant shall:
 - i. Keep and maintain public records that ordinarily and necessarily would be required by SF in order to perform the services under this Agreement;
 - ii. Provide the public with access to public records on the same terms and conditions that SF would provide the records and at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law;
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - iv. Meet all requirements for retaining public records and transfer, at no cost, to SF, all public records in possession of Consultant upon expiration, or termination, of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SF in a format that is compatible with the information technology systems of SF.

13. Intellectual Property.

- a. Consultant hereby transfers, grants, conveys, assigns, and relinquishes exclusively to SF, all of Consultant's right, title, and interest of every kind throughout the world in and to all intellectual property developed for or by Consultant in conjunction with this Agreement, including all United States and International copyrights or patents thereto, and any renewals or extensions thereof, together with all other interests accruing by reason of international conventions with respect to intellectual property.
- b. Consultant agrees to sign any additional documents and otherwise cooperate with SF, as may reasonably be requested, to further evidence, perfect, protect, or enforce the transfer under this Section 7. For this purpose, the provisions of this section shall survive the termination, for any reason, of this Agreement.

14. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall remain enforceable to the greatest extent permitted by law.

15. Indemnification and Limitation of Liability

- a. In no event shall SF be liable to Consultant for indirect, special, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise.
- b. SF shall not assume any liability for the acts, omissions, or negligence of Consultant, its agents, servants, employees, or subcontractors. In all instances, Consultant shall be responsible for any injury or property damage resulting from any activities conducted by Consultant.

16. Independent Contractor. Consultant is and shall remain an independent contractor and not an employee of SF. This Agreement shall not be construed as a teaming, joint venture or other such arrangement. Nothing in this Agreement shall grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.

17. Amendments/Modifications. This Agreement may not be altered, modified, amended or changed in any manner, except pursuant to a written amendment executed and delivered by each of the parties. Additionally, any such modification, amendment or change shall be effective on the date of execution and delivery, or such later date as the parties may agree therein.

18. Project Manager. SF has appointed project manager who is responsible for enforcing the performance of this Agreement's terms and conditions and shall serve as a liaison with Consultant. SF's project manager is Jim Kuzma at jkuzma@spaceflorida.gov.

19. Notices.

- a. For a notice, or other communication, under this Agreement to be valid, it must be in writing and signed by the sending party, and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered or certified mail, in each case return receipt requested and postage prepaid; and (3) nationally recognized overnight courier, with all fees prepaid. Delivery via facsimile, or email, is also permitted provided it is followed by delivery via one of methods (1)-(3) above and any such delivery via facsimile or email shall not be deemed to have been received pursuant to Subsection 13.c. until such delivery pursuant to methods (1)-(3) above shall be deemed to have been received pursuant to Subsection 13.c.
- b. For a notice, or other communication, under this Agreement to be valid, it must be addressed to the receiving party at the addresses listed below for the receiving party, or to any other address designated by the receiving party in a notice in accordance with this Section 13.

For Space Florida:

Contracts Compliance Manager, Desiree Mayfield contracts@spaceflorida.gov

Chief Operating Officer, Jim Kuzma jkuzma@spaceflorida.gov

Space Florida
505 Odyssey Way, Suite 300
Exploration Park, FL 32953
P: 321-730-5301
F: 321-730-5307

For Consultant:

Stuart O. Witt, Consultant stuart@wittandassoc.com

S.O. Witt and Associated, LLC.
604 Sylvia Avenue
Ridgecrest, CA 93555
Cell: 760-382-5757

- c. Subject to Subsection 13.d., a valid notice or other communication under this Agreement is effective when received by the receiving party. A notice, or other communication, is deemed to have been received as follows:
 - i. if it is delivered in person, or sent by registered or certified mail, or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; and

- ii. if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which notice was not given, then upon that rejection, refusal, or inability to deliver.
- d. If a notice or other communication is received after 5:00 p.m. on a business day at the location specified in the address for the receiving party, or on a day that is not a business day, then the notice is deemed received at 9:00 a.m. on the next business day.
- e. Any notice requiring prompt action shall be contemporaneously sent by facsimile transmission or electronic mail.

20. Reserved

21. Representations.

- a. Consultant has the necessary and required Federal and State authority to enter into this Agreement with SF.
- b. Neither this Agreement nor Consultant's performance of its obligations hereunder will place Consultant in breach of any other contract or obligation and will not violate the rights of any third party.
- c. Consultant has all rights, title, and ownership of, in, and to the products, procedures, processes and/or services that Consultant is delivering and/or providing to SF pursuant to this Agreement, and Consultant has full right and authority to provide and/or deliver the same to SF.

22. Materials and Data.

- a. All data, reports, job files, logs, computer printouts, CD-ROM files, Consultant's submittals, summaries, memoranda and any and all other written work, documents, instruments, information, and materials (collectively "written work") prepared or accumulated by Consultant especially for the services rendered under this Agreement shall be the sole property of SF. SF may reuse the written work at no additional cost, and SF shall be vested with all rights of whatever kind and however created that may be in existence, provided, however, that Consultant shall in no way be liable or legally responsible to anyone for SF's use of any written work on another project.
- b. As requested by SF, Consultant agrees to deliver to SF at the end of the term of this Agreement, or at any other time SF may request, all lists, memoranda, notes, plans, records, hardware, software, and other documentation and data belonging to SF, which Consultant may possess or have under his or her control and which may have been produced prior to and including the date of termination. Consultant shall also require that all subconsultants or employees agree in writing to be bound by the provisions of this section.

23. Auditing Records.

- a. Consultant shall retain and maintain all records related to the Scope of Services provided under this Agreement, and shall make such records available for an audit as may be requested. Records may include independent auditor working papers, books, documents, and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all costs expended in the performance of the Scope of Services under this Agreement. The records shall be subject at all times to inspection, review, or audit by state personnel of the Office of the Auditor General, Chief Financial Officer, Office of the Chief Inspector General, SF, or other personnel authorized by the Florida Department of Economic Opportunity and copies of the records shall be delivered to the Florida Department of Economic Opportunity upon request.
- b. To the extent applicable, Consultant shall comply with the audit requirements of Sections 215.97 and 17.03 of the Florida Statutes.
- c. Consultant shall preserve all contract records for the entire term of this Agreement and for five years after the later of: (i) the date of submission of the final project report, or (ii) until all claims (if any) regarding the Agreement are resolved.

24. Reserved.

25. No Third-Party Beneficiaries. This Agreement does not, and is not intended, to confer any rights or remedies upon any person other than the parties.

26. Counterparts. The parties may sign this Agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

27. Facsimile Deemed as Original. Acceptance of this Agreement may be made by facsimile or electronic transmission. Receipt of the facsimile, or electronic, transmission shall for the purposes of this Agreement be deemed to be an original, including signatures.

28. Unauthorized Aliens and Employment Eligibility Verification.

- a. SF shall consider the knowing employment of unauthorized aliens, as described in Section 274A(e) of the Immigration and Nationality Act (codified at 8 U.S.C. §1324a), by Consultant or any subconsultant cause for termination of this Agreement.
- b. Consultant and Consultant's subconsultants performing work under this Agreement, shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the Consultant or Consultant's subconsultants during the term of this Agreement.

- c. E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found at: http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
- d. If Consultant or Consultant's subconsultants do not have an E-Verify MOU in effect, Consultant or Consultant's subconsultants must enroll in the E-Verify system prior to hiring any new employee after the Effective Date of this Agreement.

29. Miscellaneous.

- a. Consultant shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, disability, national origin, or marital status.
- b. Consultant shall comply with all applicable Federal, State and local laws, rules and regulations.
- c. Consultant shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.
- d. Consultant shall provide a drug-free workplace with any allegation of substance abuse given priority attention and action by management.
- e. Consultant affirms that it is aware of the provisions of Subsection 287.133(2)(a) of the Florida Statutes, and that at no time has Consultant been convicted of a Public Entity Crime. Consultant agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in termination of this Agreement by SF.
- f. Consultant affirms that it is aware of the provisions of Subsection 287.134(2)(a) of Florida Statutes, and that at no time has Consultant been placed on the Discriminatory Vendor List.
- g. Consultant agrees to comply with subsection 20.055(5) of the Florida Statutes.
- h. This Agreement may not be assigned by either party without the prior written consent of the other.
- i. This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute arising out of or relating to this Agreement shall be subject to

the exclusive venue of the United States District Court for the Middle District of Florida or the Eighteenth Judicial Circuit, in Brevard County, Florida.

- j. Consultant shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency.
- k. This Agreement constitutes the entire agreement between the parties hereto and shall supersede all previous or contemporaneous statements, communications, or agreements, either oral or written, by or between the parties hereto with respect to the subject matter hereof, and is not intended to confer upon any person other than the parties any rights or remedies hereunder.

Authorized parties are signing this Agreement on the Execution Dates under the signatures below.

Space Florida:

By: 
Name: Denise Swanson
Title: CFO/CAO

04/18/16

S.O Witt and Associates, LLC.:

By: 
Name: Stuart O. Witt
Title: Consultant/owner

04/18/16

ATTACHMENT A

Consultant and Vendor Travel Reimbursement Policy

Space Florida consultants and vendors will submit their travel expenses for reimbursement on an invoice to be based on Space Florida's Travel Policy and approved reimbursement rates. Appropriate backup will accompany the invoice as defined below. All travel must be clearly defined and approved by Space Florida's President, CFO or VP of Business Development in writing (email is acceptable) prior to any expenses being incurred by the consultant or vendor. "Clearly defined" includes the business purpose of the travel and its benefit to Space Florida along with the dates and an approximate breakdown of costs of the travel. It is the consultants and vendors responsibility to make their own travel arrangements.

Consultants and vendors may submit invoices with receipts for airfare expenses incurred prior to actual travel.

Space Florida's approved rates are as follows:

1. Use the most economical method for both travel and hotel stays. International flights may be allowed at business class only if approved ahead of time.
2. Travel begins at the Traveler's point of origin and includes a specific event or business purpose. It ends at the next major travel location, the Traveler's home or main office, or the original point of origin is reached.
3. Overnight and Meal Reimbursement rates:
 - a. Class A and Class B travel:
 - i. Class A travel includes an overnight stay, and is greater than 24 hours in duration. A day runs from midnight to midnight.
 - ii. Class B travel includes an overnight stay, and is equal to or less than 24 hours in duration.
 - iii. Traveler has choice of submitting actual hotel expenses or requesting the daily reimbursement (per diem) rate.
 1. The per diem rate is \$80.00 per day, reimbursed one-fourth of the rate for each quarter, or fraction thereof, of the travel day included within the travel period.
 2. OR, may be reimbursed for actual hotel room expenses plus meals at the per diem rate (see Class C rates).
 - b. Class C rate:
 - i. Travel with no overnight stay, less than 24 hours in duration.
 - ii. Reimbursement rates:
 1. Domestic:
 - a. Breakfast – when travel begins before 6 a.m. and extends beyond 8 a.m. = \$6.00
 - b. Lunch - when travel begins before 12 noon and extends beyond 2 p.m. = \$11.00
 - c. Dinner - when travel begins before 6 p.m. and extends beyond 8 p.m., or when travel occurs during nighttime hours due to special assignment, = \$19.00.
 2. International meals will be reimbursed at Federal per diem rates.
 - c. For all classes of travel, the meal per diem rate will be deducted for meals paid for the traveler by others.
4. If a personal car is used for travel on Space Florida's behalf, the mileage will be reimbursed at the established IRS rate.

Backup to the invoice includes:

- a. Travel approval documentation.
- b. Receipts for direct expenses greater than \$5.00, such as hotel, car rental, taxis, etc, showing company, dates and exact amounts charged.
- c. Exact dates and times of travel (so per diem reimbursements can be established).
- d. Detailed receipts for business meals that include all items purchased, a list of attendees and the business purpose. Business meals must include external guests from businesses other than Space Florida and not be comprised solely of Space Florida Staff. Regular per diem rates will apply for all other meals.
- e. For all personal car usage, submit Map Quest (or similar) directions showing total trip mileage.

AMENDMENT #1
to
CONSULTING AGREEMENT NO.: 16-080
between
S.O. WITT AND ASSOCIATES, LLC.

This Amendment #1 to Agreement No.:16-080 is entered into as of April 18, 2016, between **Space Florida** ("SF"), an independent special district, a body politic and corporate, and a subdivision of the State of Florida, and **S.O. WITT AND ASSOCIATES, LLC.**, ("Consultant"), and amends the Agreement entered into by the parties on April 18, 2016 (the "Agreement").

1. Subsection b of Section 9 entitled Compensation and Invoicing is hereby revised as indicated by the addition of the underlined language and deletion of the strike-through language:

9.b. Consultant shall be compensated at Two Hundred Dollars (\$200.00) per hour and shall not exceed twenty (20) hours per month without prior approval of the Project Manager identified in Section 18 of this Agreement. ~~prior written amendment to this Agreement.~~

2. All provisions of the Agreement that are not specifically amended by this Amendment #1 shall remain in full force and effect.

The parties are signing this Amendment #01 on the Execution Dates below.

Space Florida:

S.O. Witt and Associates, LLC.:

By: 

Name: Denise Swanson

Title: CFO/CAO

By: 

Name: Stuart O. Witt

Title: Consultant/Owner

Execution Date: July 27, 2016

Execution Date: 27 July 2016