



ADDENDUM NO. 1

REQUEST FOR QUALIFICATIONS

**COMPREHENSIVE LAND USE PLANNING AND DESIGN GUIDELINE
SERVICES**

Effective March 8, 2024, Addendum No. 1 (ONE), {Pages 1-6 and the applicable attachment(s)}, is associated with the Request for Qualifications (RFQ) seeking Statements of Qualifications those entities (Respondents) interested in providing land use planning and urban design services for conceptual planning of new development projects.

This addendum is hereby made part of the solicitation documents to the same extent as though it were an originally included item therein. This addendum shall take precedence over the IFB document(s) originally provided, where its provisions apply. The purpose of this addendum is to provide deletions, insertions, clarifications, corrections, extensions, and omissions pertaining to Contract and Technical clarifications as follows:

Addendum No. 1 and the applicable attachments may be examined without charge in hard copy format at: the Port Authority's Contracting Office, 907 Billy Mitchell Boulevard, Suite 120, San Antonio 78226.

This Addendum No. 1 hereby revises the Response Deadline to Prior to 4:00 PM CT, March 27, 2024.

Interested firms must submit Responses to the RFQ in accordance with the instructions outlined therein the RFQ document: www.portsanantonio.us/contracting

The electronic submittal address is as follows:

contractinginfo@portsanantonio.us

This addendum represents clarifications, questions received in writing, and the related responses pertaining to the RFQ documents, and site visits as follows:

Questions:

Q1. Our clients include technology companies for whom we work under NDA. We are therefore unable to provide specific client references for certain projects which are highly relevant to this effort. Will the Port be able to evaluate projects submitted with no client reference?

A1. Yes, but please include a note stating why references were not included and submit at least 3 other examples with references.

Q2. Can the Port provide any more information on the expected timeline for the project?

A2. The expected timeline for the project is at least 1 year.

Q3. Will the Port share the sample contract? If so, is there an opportunity to include comments on the contract?

A3. Sample Contract is attached.

Q4. Can you provide more information on how points will be allocated if our team includes subconsultants with local, small, minority and woman owned business certifications? Because we are not submitting a fee, how should we indicate the percentage of participation?

A4. Sub-firms will not be assigned points as they relate to this RFQ. Only Partnerships, Consortiums, or Joint Venture arrangements will be assigned points based on the estimated percentage of the contract and corresponding scope of work to be completed by each Partner or each firm represented in the Joint Venture / Consortium. (For example: Firm "A" is partnering with Firm "B" and Firm "C". Firm "A" will complete 30% of the scope, Firm "B" will complete 45% of the scope and Firm "C" will complete 25% of the scope requirements. Firm "A" is certified as a Local, Small, Woman-Owned Firm, Firm "C" is certified as a Local, Small firm. Points will be awarded to Firm "A" and Firm "C" based on their percentage of participation.)

Q5. Can you clarify what form of partnership would satisfy the requirements of a partnership for a consortium of firms to be evaluated as the prime firm – we are specifically interested in teaming with one or more Local/MBE/WBE firms but need to understand if it would have to be a true joint-venture that is executing the contract or if our firm can remain the prime from a contractual standpoint with our other consortium partners contracted through us?

A5. There is no set requirement on the form or make-up of a partnership, consortium, or joint venture for this solicitation. Please describe your proposed arrangement in the proposal.

Q6. Can you send the form of proposed contract for our review?

A6. The Sample Contract is attached.

Q7. It is our understanding that some of the services would be considered “on-call” services; is the detailed schedule requested as part of the Vision and Project Approach section to be focused on the creation of the land use vision, existing site analysis, sustainability and resiliency plan, and design guidelines?

A7. Yes, the schedule should be for the major aspects of the project such as those mentioned in this question and not including ongoing on-call services.

Q8. The project has a clear focus on placemaking with an emphasis on walkability, connectivity, and building a high-quality public realm. Has a Form-Based Code been discussed? Form-Based Codes create a walkable public realm by regulating the form of buildings, streets, and public spaces. Or are Design Guidelines, which are generally less strict and more advisory, felt to be the optimal regulatory tool?

A8. A form-based approach could be taken with the guidelines, but the city of San Antonio zoning regulations and building codes, which apply to Port property, will not be impacted.

Q9. Will the Port Authority create a Steering Committee to work with the Consultant Team?

A9. A formal Steering Committee is not planned for this effort.

Q10. What is the projected budget range for this project?

A10. A specific budget for this project has not been identified. The Port’s capital budget for fiscal year 2024 includes \$525,000 for Pre-Development Planning, some of which has already been spent on related efforts.

Q11. Is there a schedule for activities related to this work or should it be considered an IDIQ contact?

A11. There will likely be a specific schedule for the major aspects of the project with a not-to-exceed time period and cost for ongoing on-call services.

Q12. Does the project scope include the entirety of to The Port of San Antonio property (identified in Blue in EXHIBIT A)?

A12. Yes.

Q13. Are there any industries you would like to attract to The Port outside of government & aerospace?

A13. Yes. Our current focus has been on customers in the aerospace, cybersecurity, national defense, critical infrastructure, robotics, space exploration, advanced manufacturing, specialized technical training, education, and research and development industries, but we are open to other industries as well.

Q14. Beyond the Boeing Center, are there desired facilities for public interfacing?

A14. Yes. The current conceptual plans include an expansion of the Boeing Center, additional museums, educational facilities, research facilities with some areas open to the public, retail & restaurants, hotel(s) & gym(s), potentially other entertainment venues, and a significant amount of outdoor public space.

Q15. Is it an aspiration for The Port to partner with local universities and establish satellite campuses or programs?

A15. Yes, this is a possibility.

Q16. How do you see the growth and development of San Antonio and The Port interacting? For example:

- a. New or extended bus routes (including a more efficient connection to the Quintana community via public transit)
- b. Connection to the “ART” route
- c. Investment in green infrastructure with the San Antonio River Authority
- d. Implementation of San Antonio “climate ready” sustainability strategies

A16. We are working with the local agencies mentioned above and others to identify opportunities to integrate the Port’s development with the development of the San Antonio area, including multimodal connections to the surrounding neighborhoods and to downtown.

Q17. Are there any specific resources or needs which you would like campus wide strategies to address? For instance:

- a. Energy production
- b. Heating and cooling
- c. Water management
- d. Waste management

A17. Yes, all of the above could be considered in the campus-wide development strategy. Energy resilience and redundancy has been and will continue to be a focus along with central utility plants.

Q18. The RFQ states that The Port will be an 18-hr, 7 day regional destination. Are there any plans for a hotel and other accommodations to maintain activation of the campus?

A18. Yes.

Q19. The RFQ asks for Prime Firms or JV's only, but would collaborations between local and out-of-town practices be welcome to submit jointly? Would such a collaboration need to be legally organized to submit (JV or otherwise) or could it be an informal collaboration?

A19. Yes. Collaborations between local and out-of-town practices are welcome to submit jointly. The collaboration would need to be legally organized by the time the contract is executed but does not need to be legally organized at the time of the proposal. Please complete Attachment 3 – General Information (Form A) and submit with the response.

Q20. Would winning this contract preclude the respondent from pursuing other architectural or planning projects with the Port flowing from this work?

A20. No.

Q21. What is the Port's desired schedule or this work? Are there any interim milestone's anticipated that this project will need to meet in order to aid the Port in other initiatives, development projects, grant pursuits etc?

A21. We anticipate the major aspects of the project to take up to or possibly longer than a year. There will likely be interim milestones to prioritize specific areas of the Port due to major project timing.

Q22. Per Submittal Requirement 1.d., What does the Port consider to be relevant "available resources" for this effort? Should we interpret this as primarily human resources i.e. staffing availability?

A22. Yes, this is primarily staffing availability.

Q23. Would a firm need to submit their qualifications if they do not wish to prime, but do wish to perform services as a subconsultant under the selected prime firm?

A23. No.

Q24. If selected, is there a fee budget and timeframe for starting and completing the work we qualifying for?

A24. These will be agreed to in the contract.

Q25. If selected, what size (acreage) are the new development projects typically?

A25. New development projects could be up to 100 acres for industrial or airfield projects. The planning services will be for the entire Port, which is approximately 1,900 acres.

Q26. Is your intent to hire a qualified firm that provides all services under one roof?

A26. This is not required.

Q27. If a firm submits qualifications with other sub-consultants as “multiple parties”, are you requiring some type of legal partnership, consortium, etc. or can it be as a collaboration only?

A27. To receive points for SMWVBE, they need to be identified as a partnership, consortium, or joint venture. The collaboration would need to be legally organized by the time the contract is executed but does not need to be legally organized at the time of the proposal. Please complete Attachment 3 – General Information (Form A) and submit with the response.

Q28. If selected, will there be an opportunity to add subconsultants at a later date?

A28. Yes.

Q29. Please confirm sub-consultants’ qualifications, specifically project sheets and resumes, will not affect the evaluation. (We acknowledge the “multiple parties” instructional text under Section IV.1.C.)

A29. Correct.

Q30. Is there a page limit for the submittal overall or limits for select sections? (We acknowledge the content brevity requests and the 150MB file limit)

A30. No.

Q31. The RFQ for the below referenced opportunity notes “Attachment 5 – Sample Contract for Services”. That attachment only contains a title sheet and does not include the actual sample contract. Is there something that should have been included for that exhibit?

A31. A sample contract document is attached.

Attachments:

- Sample Professional Services Agreement Document

End of Addendum No. 1

SAMPLE PROFESSIONAL SERVICES AGREEMENT

Vendor: _____
Contract Number: _____

This Professional Services Agreement (the “Agreement”) is entered into as of this _____ day of _____, 20____ (the “**Effective Date**”) by and between the Port Authority of San Antonio (the “Port San Antonio”), a Texas defense base development authority and political subdivision of the State of Texas,¹ with its headquarters located at 907 Billy Mitchell Blvd., Suite 120, San Antonio, Texas 78226, and [Vendor], a [type of legal entity (i.e., Texas limited liability company, Delaware corporation)] (hereinafter referred to as “Consultant”), an independent contractor, with its principal place of business at [Vendor’s complete address], for [name of project or services]. Port San Antonio and Consultant are individually referred to as “Party” or collectively as the “Parties.”

1. Definitions

- a. “Deliverables” shall mean those items specifically identified in writing in the Scope of Services as a deliverable or the output created specifically for or commissioned by Port San Antonio as the result of work performed by Consultant during a project.
- b. “Goods” shall mean the equipment, products, supplies, parts, materials, and/or other tangible items supplied by Consultant to Port San Antonio and identified in the Scope of Services and any related support, consulting, training, installation, maintenance, and/or other services incidental to Port San Antonio’s use of the Goods.
- c. “Scope of Services” means the document attached hereto as Attachment A.
- d. “Services” shall mean the services Consultant has been engaged to provide to Port San Antonio as further described in the Scope of Services, and unless agreed otherwise by the parties in writing, includes all labor, tools, equipment and machinery, parts and materials required to fulfill Consultant’s obligations.
- e. “Software” shall mean the software programs and related program updates and documentation supplied by Consultant to Port San Antonio and identified in the Scope of Services and any related support, consulting, training, installation, maintenance, and/or other services incidental to Port San Antonio’s use of the Software.

2. Services

- a. Consultant agrees to perform the Services described in Attachment A entitled “Scope of Services and Compensation.”

3. Term & Termination

- a. Term. The initial term of this Agreement will commence on [Date 1] and will continue through 11:59 p.m. (Central time) on [Date 2] (the “Initial Term”). This Agreement may be renewed for additional periods (each, a “Renewal Term,” and together with the Initial Term, the “Term”) upon written consent by both parties.
- b. Suspension of Services. Port San Antonio may suspend Consultant’s Services upon seven (7) days’ written notice.

¹ Pursuant to Texas Local Government Code § 379B.

- c. Termination for Cause. If either party believes that the other party has failed in any material respect to perform its obligations under the Agreement, then that party shall provide written notice to the other party describing the alleged failure in reasonable detail. If the breaching party does not, within thirty (30) days after receiving such written notice, either (a) cure the material failure or (b) if the breach is one that cannot reasonably be cured within thirty (30) days, commence and continue to diligently pursue a cure satisfactory to the non-breaching party, then the non-breaching party may terminate the Agreement, in whole or in part, “For Cause” by providing written notice to the breaching party.
- d. Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- e. Termination for Insolvency. Either party shall have the right to immediately terminate the Agreement, by providing written notice to the other party, in the event that (i) the other party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other party’s property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
- f. Termination at Will. Either Party shall have the option to terminate this Agreement, without cause, by providing the other Party thirty (30) days’ written notice.
- g. Cessation of Work. Upon receipt of a written termination notice, Consultant shall cease all work. In the event of termination, Consultant shall deliver to Port San Antonio all work, whether complete or partially complete. Such work shall be delivered in a form acceptable to Port San Antonio within five (5) business days of Consultant’s receipt of a notice of termination For Cause, and within thirty (30) calendar days of Consultant’s receipt of any other notice of termination. Port San Antonio will reimburse Consultant for approved work accomplished up to the point of termination notice receipt. Within thirty (30) calendar days of the effective date of completion or termination or expiration of this Agreement, Consultant shall submit to Port San Antonio its claim for monies owed by Port San Antonio for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said thirty (30) calendar days shall negate any liability on the part of Port San Antonio and constitute a waiver by Consultant of any and all right or claim to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- h. Continuation of Services. Regardless of how the Agreement is terminated, Consultant will affect an orderly transfer to Port San Antonio or to such persons as Port San Antonio may designate, at no additional cost to Port San Antonio, all completed or partially completed documents, papers, records, and other materials or information produced as a result of or pertaining to the Services rendered by Consultant, or provided to Consultant. Any record retention shall be completed within thirty (30) calendar days of written termination notice. Final payment of compensation due or to become due to Consultant is conditioned upon delivery of such documents, if requested.

4. Payment

- a. Invoices. Consultant shall submit a valid invoice to Port San Antonio (Attn: Accounts Payable Office), 907 Billy Mitchell Blvd., Suite 120, San Antonio, Texas 78226, or to accountspayable@portsanantonio.us (copying ContractingInfo@portsanantonio.us) within fifteen (15) days of completed monthly progressive services in accordance with the terms represented in Consultant's proposal for delivery of the scope of work. Invoices shall include sufficient detail so that invoiced amounts can be matched to the Services, Goods or Software provided. Such detail shall include all applicable information - details of Services provided and on what dates, contract numbers, purchase order numbers, information regarding Goods and Software and the delivery of such products. Port San Antonio will make payment within thirty (30) days of receipt of a valid invoice. Port San Antonio shall not be required to pay any invoices that are issued more than sixty (60) days after the end of the month during which fees accrued.
- b. Disputed Amounts / Late Payments. If there is a dispute with respect to any portion of an invoice, Port San Antonio shall pay the undisputed portion and provide written details specifying the basis of any dispute. If Port San Antonio fails to pay when due any properly invoiced and undisputed amount, Consultant may be entitled to interest for overdue payments pursuant to the Texas Prompt Payment Act.
- c. Taxes. Port San Antonio is a Texas defense base development authority and a political subdivision of the State of Texas, and as such, is a public tax-exempt organization. Port San Antonio is exempt from certain sales and use taxes with respect to the purchase price or rental price of all materials, supplies, equipment and consumables that are used by Consultant in performance of the Agreement, and Consultant shall not invoice or charge Port San Antonio for such taxes. Consultant will be provided with a sales tax exemption certificate upon request for such purchases or rentals.

5. Independent Contractor

- a. Independent Contractor. Consultant shall provide to Port San Antonio the personal and technical consulting services hereunder. Consultant shall act in accordance with its own expertise, experience, manner, and methods and through its own duly authorized employees or agents and shall comply with all applicable laws, rules, and regulations governing the performance of Services. The parties recognize that Consultant is an independent contractor and not an employee, agent, partner, joint venture affiliate, or legal representative of Port San Antonio. Consultant at no time will hold itself out as an agent, subsidiary, or affiliate of Port San Antonio for any purpose, including reporting to any governmental authority, and shall have no authority to bind Port San Antonio to any obligation. The personnel performing the Services shall at all times be under Consultant's exclusive direction and control and will be employees of Consultant and not employees of Port San Antonio. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters. Consultant shall be liable for failure to pay such taxes and hereby indemnifies and agrees to hold Port San Antonio harmless from and against any loss, cost, or expense incurred by Port San Antonio due to failure of Consultant to withhold any such taxes or to make such contributions in respect to any compensation Port San Antonio pays to Consultant.
- b. Personnel Under Control of Consultant. The personnel performing Services under the Agreement shall at all times be under the control of Consultant. Consultant shall be fully liable for all acts and

omissions of its employees, subcontractors, or other personnel assigned by Consultant to perform Services, and shall be specifically responsible for sufficient supervision and examination to assure compliance in every respect with the Agreement requirements.

- c. Qualification. Consultant's personnel assigned to the project shall possess sufficient skills and expertise, and provide any certification(s) to prove qualifications as required to satisfactorily meet all specifications and obligations of Consultant under this Agreement consistent with Consultants providing similar types of services in the industry. Port San Antonio retains the right to reject or require Consultant to remove any employee whose qualifications or performance that, in Port San Antonio's good faith and reasonable judgment, do not meet the standards established by both parties necessary for performance of the Services hereunder.
- d. Intentionally Deleted
- e. Port San Antonio Property. Consultant shall only use Port San Antonio's equipment, facilities, personnel, and office space as reasonably necessary for the performance of Services as agreed upon by Consultant and Port San Antonio. All Port San Antonio property in the possession or control of Consultant including, but not limited to, specifications, documentation, and building entry keys and cards, as well as all material developed or derived by Consultant in performing Services under the Agreement, will be returned by Consultant to Port San Antonio on demand, or at the termination of the Agreement, whichever shall come first.
- f. Safety & Security. Port San Antonio is committed to the highest safety and security standards on behalf of its employees and customers. In performance of the Services, Consultant personnel must comply with Port San Antonio's safety and security requirements, as they may be modified from time to time, including but not limited to on-site security requirements, security policies. If Consultant is provided access to Port San Antonio's customer premises, Consultant agrees to comply with the customer's safety and security policies and requirements.

6. Subcontracting

- a. Subcontractors. Consultant agrees that any Subcontractor not part of the initial team will require Port San Antonio's written consent prior to the assignment of any subcontractor to perform any of the Services hereunder. Requests for approval should (i) identify the subcontractor and the work to be performed, (ii) include the contract number, and (iii) be sent to the point of contact (identified in Section 16 (Notices) below) with a copy to ContractingInfo@portsanantonio.us. No such approval shall relieve Consultant from any of the obligations of the Agreement with Port San Antonio. Consultant shall require each subcontractor, to the extent Services are performed by the subcontractor, to be bound by the terms of the Agreement and to assume towards Port San Antonio, to the extent applicable, all the responsibilities and obligations which Consultant by the Agreement assumed towards Port San Antonio. Consultant further agrees that it will remain primarily responsible for the Services performed under this Agreement, unless Port San Antonio and Consultant agree otherwise, and Consultant will supervise the work of subcontractor to ensure that the work performed relating to the Services is in accordance with applicable professional standards. Consultant shall keep such records and furnish reports and information relative to the subcontractor or subcontractor's employees, agents, etc. as Port San Antonio may reasonably request.

- b. **Inclusion Goals.** It is the policy of Port San Antonio to encourage involvement of qualified Minority or Woman Owned Business Enterprises and Small and/or Local Business Enterprises in soliciting and awarding competitive contracts in accordance with the specific aspirational goals. The Aspirational Goal policy is a method implored by Port San Antonio to ensure that all businesses, including minority or woman owned businesses and small and/or local businesses have the opportunity to compete for procurements funded by Port San Antonio. The Aspirational Goals are not mandates or quotas but simply Port San Antonio's goals in obtaining diversity in its awarding of Contracts. To the extent Contractor uses subcontractors to perform any of the Services, Contractor will make a good faith effort to meet Port San Antonio's Local, Small, Minority and Woman Owned Business Enterprise aspirational goals, which are attached hereto as Attachment B, and which may be modified from time to time. **If Contractor uses subcontracting opportunities as approved by Port San Antonio, Contractor will submit a monthly report of subcontractor utilization in a format acceptable to Port San Antonio.** The report should be emailed to ContractingInfo@portsanantonio.us. Contractor must include the contract number on the report.

7. Work Product

- a. As part of the total compensation which the Port has agreed to pay Consultant for the services to be rendered under this Agreement, Consultant agrees that all finished and unfinished material produced by Consultant. Consultant shall not use such work products for Consultant's purposes unless Consultant receives advanced written permission from the Port.
- b. All work product, including, but not limited to, documents, strategic material, plans, correspondence, agreements and reports, and all parts thereof, which are prepared in the performance of this Agreement will be the exclusive property of Port San Antonio. There will be no limitations upon Port San Antonio as to subsequent use of the materials, plans, or ideas incorporated into the work product and Port San Antonio will have the full and free right to use such property at its discretion, either directly or through agents or otherwise without further compensation paid to Consultant, however, Port San Antonio does agree to release Consultant of any liability related to the reuse of the materials, or reports by others.
- c. Consultant will retain a non-exclusive, royalty-free license to use any such documents, concept, product or process produced by or resulting from the Services rendered by Consultant. Consultant retains the ownership of any of its intellectual property used in the creation of the documents whether incorporated in the documents or not.

8. Records

- a. Records. Consultant shall retain any and all documents and accounting records produced as a result of this Agreement for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of this Agreement and cause its sub-contractors to do the same. All records shall be made available to Port San Antonio and/or any Port San Antonio grantor agency for inspection, audit, or copying upon reasonable request. If, at the end of the retention period, there is litigation or other questions arising from this documentation or the services provided, Consultant shall retain the records until the resolution of such litigation or other such questions.
- b. Preservation of Contract Information. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Agreement and Consultant agrees that the contract can be

terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

9. Application of Law, Adherence to Laws, Data Privacy

- a. Applicable Law and Venue. The Agreement is performable in San Antonio, Bexar County, Texas, and is governed by the laws of the State of Texas. The parties hereto agree that any action related to this Agreement will be brought solely and exclusively in the District Court of Bexar County, Texas.
- b. Adherence to Laws. Consultant agrees that in carrying out its duties and responsibilities under this Agreement, it shall neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulation in effect in the United States; or (ii) would have the effect of causing Port San Antonio to be in violation of any laws, decrees, rules, or regulations in effect in the United States. Consultant will protect, defend and indemnify Port San Antonio and its officers, Board members, employees and agents against any claim or liability from or based on any violation of the same.
- c. Solicitation of Business. Consultant agrees that in connection with this Agreement, it shall not, directly or indirectly, give, offer, or promise, or authorize to be given, offered, or promised, anything of value to any entity or individual with the intent to (i) influence any act or decision of such entity or individual, or (ii) induce such entity or individual to use their influence to affect or influence any act or decision in order to assist Port San Antonio. Consultant agrees to notify Port San Antonio immediately of any solicitation, demand, or other request for anything of value, by or on behalf of any entity or individual, relating to the subject matter of this Agreement.
- d. Licenses & Permits. Consultant shall obtain all necessary permits, licenses, and any other forms of documentation required to deliver the Goods, Software, and/or Deliverables and to perform any Services provided hereunder at its sole cost unless the law or regulation governing such permitting or licensing requires that Port San Antonio do so. Upon request, Consultant shall promptly furnish Port San Antonio copies of all permits, licenses or other documentation applicable to the Agreement.
- e. Data Privacy. Consultant agrees that if, as part of the performance of the Agreement, it has possession of, or access to, any data that is subject to legal or regulatory privacy or security requirements under the laws of any jurisdiction where Consultant or Port San Antonio or a third party to whom the data belongs or to whom it refers is located, it shall comply with such laws, and shall not do anything or omit to do anything which would cause Port San Antonio or any third party associated with Port San Antonio (including without limitation, a Port San Antonio customer) to breach any such laws. Consultant shall not sell or use Port San Antonio data other than as may be expressly authorized by Port San Antonio. Consultant shall not transfer (logically or physically) Port San Antonio data to any country or territory outside the United States of America unless required in Consultant's performance under the Agreement, provided Consultant notifies Port San Antonio prior to such transfer. Consultant shall not provide Port San Antonio data to any subservice or subcontractor unless expressly authorized by Port San Antonio. Consultant shall track the usage of Port San Antonio data and maintain the ability to immediately destroy or sanitize Port San Antonio data at the written request of Port San Antonio, which shall not exceed 24 hours after Port San Antonio's request.

10. Confidentiality

- a. Confidential Information. The parties understand and acknowledge that they may, from time to time, disclose and receive Confidential Information. The following information is “Confidential Information”: the terms of the Agreement, and all information exchanged by or on behalf of the parties during negotiations culminating in the Agreement and during the Term of the Agreement; any information related to a party’s performance of, or failure to perform, the Agreement; any information that is marked or designated as “Confidential” at the time of disclosure; any information related to that party’s assets, liabilities, finances, business strategies, product development plans, operations, technology, know-how, trade secrets, inventions, techniques, processes, source code, schematics, designs, network topology, network and data storage information, customers, vendors, and personnel; and all other information that a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure. During the Term of the Agreement and thereafter, the receiving party will not (i) use the Confidential Information except to perform its duties and obligations under the Agreement or (ii) disclose the Confidential Information to any third party without the prior written consent of the disclosing party, except that the receiving party may disclose the Confidential Information to its employees, agents, and representatives who need to know the information to represent or advise it with respect to the subject matter of the Agreement, and who are bound by written non-disclosure obligations at least as stringent as those stated in the Agreement. The receiving party shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, and representatives. In no event shall the receiving party use the disclosing party’s Confidential Information to reverse engineer products or services of the disclosing party. The receiving party’s obligations with respect to the Confidential Information also extend to any third party’s proprietary or confidential information disclosed by the disclosing party to the receiving party under the Agreement.
- b. Non-Protected Information. This confidentiality obligation will not apply to the extent that the receiving party can demonstrate that: (i) the Confidential Information is available to the public at the time of disclosure; (ii) the Confidential Information thereafter becomes available to the public, except by breach of the provisions of the Agreement or violation of law or other agreement; (iii) the receiving party can establish by written evidence that it had possession of the Confidential Information prior to the time of disclosure; (iv) the Confidential Information is received by the receiving party from a third party that is not bound by a confidential relationship with the disclosing party; or (v) the Confidential Information was developed by employees or agents of the receiving party independently of and without reference to any Confidential Information.
- c. Disclosure. If the receiving party is requested or required (e.g., by deposition, interrogatory, request for documents, subpoena, civil investigative demand, open records request, or similar process) to disclose any of the Confidential Information, then the receiving party will notify the disclosing party (to the extent legally permissible) promptly in writing so that the disclosing party may seek any appropriate protective order and/or take any other action prior to disclosure. In any event that the receiving party is legally compelled or obligated to disclose any of the Confidential Information, such Confidential Information may be disclosed as required; provided, however, that the receiving party will use reasonable efforts to minimize the disclosure of such information.

- d. Return or Destroy. Each party shall return or irretrievably destroy the other party's Confidential Information and all material that is derived from the Confidential Information immediately on completion of the Agreement, or earlier upon request of the other party, provided that a party may retain the other party's Confidential Information only if reasonably necessary to use the goods, software, deliverables, and/or services, or to maintain reasonable and customary business records. On request of a party, an officer of the other party shall certify its compliance with the preceding sentence.
- e. Injunctive Relief. The parties agree that the disclosure of Confidential Information by the receiving party may cause the disclosing party irreparable damage for which recovery of money damages may be inadequate. The disclosing party is therefore entitled to seek, in addition to all other rights and remedies available under applicable law, injunction, temporary restraining order, protective order, specific performance, or any other equitable relief, from any court of competent jurisdiction, restraining any violation or threatened violation of any terms of this section, it being agreed that money damages alone would be inadequate to compensate the affected party and would be an inadequate remedy for such breach.
- f. Public Information Act. Notwithstanding any provision herein to the contrary, Consultant acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in Port San Antonio's possession, including materials submitted by Consultant, may be subject to the provisions of the Public Information Act, Texas Government Code, Chapter 552. If Consultant believes information or materials submitted to Port San Antonio constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Public Information Act, Consultant shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Nothing contained in this section shall modify or amend requirements and obligations imposed on Port San Antonio by the Public Information Act or other applicable law, and the provisions of the Public Information Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

11. Insurance

- a. Minimum Insurance Requirements. Consultant agrees to carry and keep insurance in full force during the Term sufficient to fully protect Port San Antonio from all damages, claims, suits and/or judgments including, but not limited to, errors, omissions, violations, fees and penalties caused or claimed to have been caused by, or in connection with the performance or failure to perform under the Agreement by Consultant, Consultant's agents or employees, a Consultant subcontractor, or its agents or employees. Consultant's insurance shall be primary to and non-contributory with any self-insurance and/or insurance maintained by Port San Antonio.
- b. Consultant agrees to maintain the below listed Insurance to cover all of its own personnel engaged in performing services for Port San Antonio under this Agreement in not less than the following amounts:

Professional Liability

- \$1,000,000.00 each occurrence
- \$1,000,000.00 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act,

malpractice, error, or omission in professional services and if written on a claims made basis shall provide coverage for an additional 24 months after completion date of contract.

Worker's Compensation – Statutory Amount
Employer's Liability - \$500,000.00

Commercial General Liability

Personal injury and property damage:

- \$1,000,000.00 combined single limit each occurrence and
- \$2,000,000.00 aggregate

Business Automobile Liability for all vehicles (owned/leased vehicles; non-owned vehicles; hired vehicles)

Bodily injury and property damage:

- \$1,000,000.00 combined single limit any one accident.

Umbrella Liability

- \$1,000,000.00

Employment practices liability

- \$1,000,000.00 claims relating to the employment practices of Contractor

- c. Consultant shall add Port San Antonio and its Board of Directors, together with their respective officers, elected officials, employees, and representatives, individually or collectively, as additional insureds on all required insurance policies, except workers' compensation, and any errors and omissions insurance that Consultant might carry. The Commercial General Liability Policy and Excess Liability Policy (Umbrella Form) shall be of an "occurrence type" policy. Workers' compensation and employer's liability policies will provide a waiver of subrogation in favor of Port San Antonio. Other appropriate coverages will also contain a similar waiver of subrogation clause. The Commercial General Liability Policy shall also include protection against claims insured by usual personal injury liability coverage, and a "protective liability" endorsement to ensure contractual liability assumed by Consultant under the section entitled "Indemnification."
- d. Consultant shall furnish Port San Antonio original completed Certificate(s) of Insurance within five (5) business days of the effective date of this Agreement, which confirms that all required insurance policies, are in full force and effect. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions Consultant shall ensure its insurance company incorporates at least a thirty (30) calendar day cancellation notice on the policy. Insurance coverages shall be written by companies authorized and admitted to conduct business within the State of Texas and rated A- or better by A.M. Best Company, or are otherwise proven acceptable to Port San Antonio. Surplus lines carriers offering coverages need not be "Admitted Carriers" in the State of Texas, but must otherwise demonstrate their financial strength and reputation to Port San Antonio in consultation with its insurance advisors. Consultant shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage required by this Agreement.

12. Indemnification

- a. **Consultant shall indemnify, defend and hold harmless Port San Antonio, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be), officers, employees, representatives, and agents (collectively, the “Port Indemnified Parties”) from and against any third party claims, demands, loss, damage or expense alleged to be caused solely by the negligence, intentional misconduct, or breach of Consultant’s obligations under the Agreement by the Consultant, its personnel or agents in connection with the Agreement. Consultant shall defend the Port Indemnified Parties against a claim asserted by an individual assigned by Consultant to perform the Services, regardless of whether the claim alleges facts that constitute a breach by Consultant of its obligations under the Agreement, except to the extent such claim is not related to the subject matter of the Agreement or is based on Port San Antonio’s violation of applicable law or regulation, gross negligence or willful misconduct**
- b. To the extent that any claim arises from the concurrent conduct of Port San Antonio, Consultant and/or any third party, it is expressly agreed that each party’s obligation to indemnify and hold harmless under this section shall be effective only to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a Subcontractor or supplier committed by Consultant or the Consultant’s agent, sub-consultant, or other entity over which Consultant exercises control. Consultant shall reimburse Port San Antonio its reasonable attorney’s fees in proportion to Consultant’s liability in such event.
- c. As the Services are intended for Port San Antonio and not third parties, Port San Antonio to the extent allowed by law, agrees to release, indemnify and hold harmless the Consultant and its members, partners, employees, contractors, agents and affiliates (collectively, the “Consultant Group”) from and against any and all claims, liabilities, or expenses (including attorneys’ fees) relating to the Services or Deliverables in contract, statute, or tort (including without limitation negligence) (collectively, the “claim” asserted against any member of the Consultant Group by a third party. Port San Antonio further agrees to release, indemnify and hold harmless Consultant Group from any direct or third-party Claims relating to the Services attributable to any misrepresentations made by Port San Antonio.

13. Limitation of Liability

- a. **Neither Party (nor its employees, agents, suppliers or affiliates) shall be liable to the other for any lost profits or any indirect, special, incidental, punitive, or consequential loss or damage of any kind arising in connection with the agreement, even if the party has been advised or should be aware of the possibility of such damages.**
- b. Nothing in the agreement limits or excludes either Party’s liability for loss or damage caused by its gross negligence, willful misconduct, or any fraud or fraudulent misrepresentation, and nothing contained in the foregoing is intended in any way to limit indemnification obligations for third party claims or the recovery.

14. Warranties

- a. Consultant gives the following warranties:

Services / Deliverables. In addition to any warranties stated in the Documentation for Services and/or Deliverables, Consultant gives the following warranties:

- i. *Professional Services.* Consultant warrants that all Services performed pursuant to the Agreement shall be performed by qualified personnel with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Consultant shall be responsible for the completeness and accuracy of his/her/their work product, reports, supporting data, drawings, schematics or any other required documents prepared or compiled under his/her/their obligation under the Agreement. Consultant warrants that (a) it has exercised, and will continue to exercise, high standards of professional care, knowledge, skill and judgment in performance of its obligations hereunder, (b) in developing and preparing its drawings, reports, and plans, Consultant shall use sound professional principles and practices in accordance with accepted industry standards and in conformance with the applicable laws, regulations, ordinances, codes and requirements set forth in the Agreement, and (c) if notified of any material errors in the Services, it shall use its best efforts to correct such errors at no additional cost to Port San Antonio and chargeable to Consultant for one (1) full year following completion of construction or Services (as applicable). If re-performance is impracticable and Consultant has already been compensated for the work that has been verified as incorrect or nonconforming, Consultant will refund the amount of compensation paid to Consultant for such nonconforming portion of the Services to include all reimbursables. The fact that Port San Antonio has accepted or approved Consultant's work shall in no way relieve Consultant of any of its responsibilities. The cost of design necessary to correct errors attributed to Consultant and any damage incurred by Port San Antonio as a result of an engineering error shall be chargeable to Consultant. Additional construction added to the project shall not be considered the responsibility of Consultant unless the need for same was created by a negligent act, error, or omission of Consultant. The fact that Port San Antonio accepted or approved Consultant's work shall in no way relieve Consultant of any responsibility.

- b. Additional Consultant Representations and Warranties. Consultant makes the following additional representations and warranties:

- i. *Title.* Upon payment, Port San Antonio shall acquire good and marketable title to all Goods, Software, and/or Deliverables, free and clear of liens and encumbrances. If Port San Antonio receives notice of a lien or claim on Consultant's delivered Goods, Software, Deliverables and/or Services, Consultant shall, at its own expense, take all action necessary to cause the lien or claim to be released or discharged immediately, or secure and file a security bond covering the amount of the lien or claim, at Port San Antonio's election. Upon Port San Antonio's request, Consultant shall provide evidence that the lien or claim has been released, discharged or secured. If Consultant fails to furnish adequate evidence within ten (10) calendar days of the demand, Port San Antonio may discharge the indebtedness and deduct the total of all costs and fees from any money owed to Consultant;
- ii. *Network Corruption.* Consultant shall not introduce into any Port San Antonio information technology system any virus, disabling code, malware, trap, or other set of computer

instructions that are designed to usurp or damage the normal operation of, or allow covert access to, a computer, computer system or computer network, or deny access to or corrupt data;

- iii. *Consultant Documentation.* Consultant's Documentation shall be substantially accurate and complete; and
- iv. *No Litigation.* As of the Effective Date, there are no actions, suits or proceedings pending or threatened against Consultant, Consultant's representatives, or Consultant's subcontractors alleging infringement, misappropriation, or other violation of any intellectual property rights related to any Goods, Software, Deliverables, or Services contemplated by the Agreement.

15. Dispute Resolution

- a. Any dispute or difference between the Parties arising during the term of this Agreement, out of or in connection with this Agreement shall be referred for resolution to the senior management of the Parties. Any such dispute or difference which has not been resolved as aforesaid within twenty (20) calendar days from the date the dispute or difference is first so referred for resolution, shall, if the Parties are unable to resolve the matter through another form of alternative dispute resolution, be referred to mediation.
- b. The electing Party may initiate such mediation by giving ten (10) calendar days' written notice to the other Party of its intention to do so. The mediation shall be held in San Antonio, Texas or such other location as may be mutually agreed and conducted in accordance with the rules of the American Arbitration Association (AAA Construction/Industrial). If the Parties involved are unable to agree on a single mediator within twenty (20) calendar days of such notice, each party shall select a list of three (3) mediators within thirty (30) calendar days of such notice, and the parties agree to act in good faith to select an agreed upon mediator. Each Party involved shall be responsible for all expenses and costs of its officers, employees, agents, or the like related to such mediation. Pending final resolution of the matter, the Parties shall proceed diligently with performance of this Agreement according to the instructions of Port San Antonio's authorized representative. Any timeline requirement in this Article may be extended by mutual agreement of the parties.
- c. If the parties are unable to select a mediator, of the mediation is not successful, then the parties agree that any action related to this Agreement will be brought solely and exclusively in the District Court of Bexar County, Texas.

16. Miscellaneous

- a. Controlling Document. To the extent that the terms of Consultant's bid or proposal conflict or are inconsistent with the provisions of this Agreement (including the Scope of Services and Compensation), the terms of this Agreement shall control. The pre-printed terms of Consultant's business forms shall have no effect whatsoever. If the installation process for Software presents a "clickwrap" or similar agreement, Port San Antonio's "click" or other action taken to advance the installation shall be deemed an acceptance only of those terms that conform to the Agreement; other terms shall be of no force or effect whatsoever.
- b. Points of Contact. For day-to-day operational cooperation, the following persons are the points of contact for each Party:

Port San Antonio:

[name]

[phone number]

Email: [email]@portsanantonio.us

Consultant:

[name]

[phone number]

Email: [email]@

- c. Notice. Any legal notice or other formal communication pursuant to business contemplated herein shall be in writing and shall be deemed to have been fully given upon receipt at the following addresses or such other address as the parties may provide in writing to the other from time to time. Notice provided by email shall not, however, be valid unless receipt of such email is confirmed by either Party via return email or otherwise.

If to Port San Antonio:

Port San Antonio of San Antonio
907 Billy Mitchell Blvd., Suite 120
San Antonio, Texas 78226-1802
Attention: President & CEO
Email: LegalNotices@portsanantonio.us
Telephone: (210) 362-7800

If to Consultant:

[Name]
[address]
[address]
Attention: [name/title]
Email: [email]
Telephone: [number]

- d. Conflict of Interest. During the Term of the Agreement, Consultant shall not undertake any new relationships with parties that give rise to a Conflict of Interest without the written consent of Port San Antonio. A “Conflict of Interest” includes, but is not limited to, those conflicts which prevent Consultant or its agents or representatives from professionally and ethically carrying out all terms of the Agreement, an organizational Conflict of Interest, which exists when, because of other activities or relationships with third parties, Consultant is unable to render impartial assistance, advice, or Services to Port San Antonio, Consultants’s objectivity is otherwise impaired, or Consultant gains an unfair competitive advantage as a result of performance under the Agreement.
- e. Waiver of Breach. The waiver by either party hereto of any breach of the terms and conditions hereof will not be considered a modification of any provision, nor will such a waiver act to bar the enforcement of any subsequent breach. No waiver, change or modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party.
- f. Brand Identifier / Trademarks. Neither party may use the other party’s name, logo, trade or service marks, or similar branding indicia (each a “Brand Identifier”) without the other party’s prior written consent. Except as expressly stated herein, each party retains all right, title, and interest in and to its intellectual property. To the extent Consultant is engaged to deliver Goods, Software, or Deliverables or to perform Services which require Consultant to reproduce Port San Antonio marks, Consultant shall comply with Port San Antonio’s brand standards.
- g. Press Releases/Publications. Consultant shall not disclose the terms of the Agreement or make representations regarding the relationship between the parties under the Agreement as part of a press release or publication without the prior written consent of Port San Antonio.

- h. Captions. The section headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- i. Assignment. Neither party may assign the Agreement, or any of its rights or obligations under the Agreement without the prior written consent of the other party, except that either party may assign the Agreement without the written consent of the other party if such assignment is (i) pursuant to a corporate reorganization; (ii) upon a consolidation, merger, reincorporation, sale of all or substantially all of its assets related to the Agreement; or (iii) a similar transaction or series of transactions. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. Any assigning party shall notify the other party within thirty (30) days of any assignment pursuant to these provisions.
- j. Entire Agreement. This Agreement, and any attachments hereto, constitutes the entire Agreement between Port San Antonio and Consultant and supersedes all previous agreements, whether oral or written. This Agreement will not be modified or amended except by a written document signed by the parties hereto.
- k. Survival. The following provisions shall survive expiration or termination of the Agreement: Confidentiality, Warranties, Limitations of Liability, Indemnification, Insurance, Miscellaneous, and any other provisions that by their nature are intended to survive expiration or termination.
- l. Prompt Action / Days. The parties hereto mutually represent and warrant to each other that they will use reasonable efforts and reasonable diligence to satisfy their responsibilities under this Agreement in a timely and professional manner. Unless otherwise expressly provided herein, all periods for performance, delivery, review or approval and the like shall be determined on a “calendar” day basis. If any day for performance, delivery, review or approval shall fall on a Saturday, Sunday or legal holiday (state or federal) in San Antonio, Texas, the time therefor shall be extended to the next business day.
- m. Attorneys’ Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of the Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys’ fees and reasonable costs and expenses to the extent permitted by law, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment, provided, however, that any settlement entered into by the parties shall be conclusively deemed to provide the parties the compensation to which they are entitled under this section regardless of whether attorney’s fees and costs and expenses are expressly addressed in the settlement agreement executed by the parties.
- n. Successors and Third-Party Beneficiaries. The Agreement shall inure to the benefit of Consultant and Port San Antonio and their respective permitted successors or assigns. No third parties shall have any rights hereunder. No provision of this Agreement will in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. Further, Consultant will perform the Services provided in connection with this engagement solely for the benefit and use of Port San Antonio.

Consultant does not anticipate and does not authorize reliance by any other party on its professional services.

- o. Force Majeure. Neither Port San Antonio nor Consultant will be considered to be in default of this Agreement if delays in or failure of performance is due to any cause of Force Majeure. The party adversely affected by a Force Majeure will use reasonable efforts to mitigate the impact of the Force Majeure. The term Force Majeure means any event that is beyond the reasonable control of the non-performing party (including delays caused by the other party or third parties acting on behalf of the other party) and that results in the prevention or delay of performance by a party and any Act of God including, but not limited to, fire, flood, earthquakes, storms, lightning, an epidemic or a pandemic declared by the World Health Organization or a public health emergency declared by the United States Secretary of Health and Human Services (HHS), in either case resulting in the United States Center for Disease Control and Prevention (CDC) or other governmental body or agency imposing restrictions which prevent a party's ability to perform, war, riot, civil disturbance, sabotage, acts of terrorism, strikes, or other labor disturbances, and judicial restraint or inability to procure permit, licenses or authorizations from any state, local, or federal agency for any of the supplies, materials, accessories, or services required to be provided by either Port San Antonio or Consultant under this Agreement. Neither party shall, however, be excused from performance if nonperformance is due to causes which are removable or remediable and which the non-performing party could have, with the exercise of reasonable diligence, resolved or remedied with reasonable dispatch.
- p. Governmental Entity. The Parties acknowledge that Port San Antonio is a political subdivision of the State of Texas and under the Constitution and laws of the State of Texas, possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and the laws of the State of Texas. Notwithstanding any provision of this Agreement, nothing in this Agreement is intended to be, nor will it be construed to be, a waiver of the Port San Antonio's sovereign immunity of the State of Texas or a prospective waiver of restriction of any of the rights, remedies, claims and privilege of the State of Texas.
- q. Non-Discrimination. Under Article 6252-16 of the Revised Civil Statutes of Texas, no person will, on the grounds of race, religion, gender, age, physically challenged condition or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of Consultant and Port San Antonio.
- r. Verification Regarding No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Texas Government Code section 2274.002, as amended, the Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing certification is made solely to enable Port San Antonio to comply with such section and to the extent such section does not contravene applicable federal or Texas law. As used in the foregoing verification and the following definitions, "discriminate against a firearm entity or firearm trade association," a term defined in Texas Government Code section 2274.001(3), means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity

or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association, 'firearm entity,' a term defined in Texas Government Code section 2274.001(6), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Texas Government Code section 2274.001(4), as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Texas Government Code section 2274.001(5), as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Texas Government Code section 2274.001(1), as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Texas Local Government Code section 250.001, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and 'firearm trade association,' a term defined in Texas Government Code section 2274.001(7) means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Internal Revenue Code section 501(a), as an organization described by Section 501(c) of that code.

- s. Severability. If any clause or provision of the Agreement is held invalid, illegal or unenforceable under present or future federal, state, or local laws, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of the Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.
- t. Invalidity. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision of this Agreement.
- u. Amendments. Changes to this Agreement may be accomplished by the issuance of a mutually approved written amendment hereto.
- v. Authorization. Each party represents and warrants that they are authorized and qualified to conduct business in the State of Texas, and that all consents or approvals required for the execution, delivery and performance of the Agreement have been obtained and that each party has the right and authority to enter into and perform its covenants contained in the Agreement.

- w. Signatures. Any documents signed in connection with the Agreement may be signed in multiple counterparts which, taken together, will constitute one original. Facsimile signatures, signatures on an electronic image (such as DocuSign, .pdf, or .jpg formats), and electronic signatures shall be deemed to be original signatures. Each person executing this Agreement warrants that he/she/they is authorized to do so on behalf of the party for whom he/she/they signs this Agreement.

[Remainder of the page is blank]

SAMPLE



This Agreement is entered into on the Effective Date noted above, and it is hereby agreed to and executed by the Parties.

Port Authority of San Antonio

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

SAMPLE

ATTACHMENT A
Scope of Services & Compensation

1. **Services provided.** Consultant shall perform the following Services, on an as needed basis, and as requested by the Port San Antonio. Services may vary in nature and may include, but shall not be limited to, the following activities (the “Services”):

[•]

2. **Deliverables.** Consultant shall deliver each of the following (the “Deliverables”) subject to the following requirements:

Deliverable Name	Description / Requirements	Due Date

3. **Fees.** The fees for the Services are as follows:

[•]

SAMPLE

ATTACHMENT B

Local, Small, Minority and Woman Owned Business Enterprise Aspirational Goals

Percentages represented below are percentages of **contract dollar values** for prime and sub-prime firms:

Port San Antonio Aspirational Goals	
<i>Category Description of Business Enterprise</i>	<i>Construction Services, Professional Services, General Services & Materials/Equipment</i>
<i>Local</i>	85%
<i>Minority Owned² / Woman Owned</i>	30%
<i>Small</i>	30%

Definitions

Disadvantaged Business Enterprise (DBE): A business that is certified in accordance with 49 C.F.R. Part 26. DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations.

Emerging Small Business Enterprise (ESBE): a sole proprietorship, partnership or corporation owned, operated and controlled by individuals that are citizens of or legally residing in the United States or its territories, whose annual revenues and number of employees is no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration.

Historically Underutilized Business (HUB): A business that is certified as a historically underutilized business. A HUB is a for-profit business owned, operated, and controlled by one or more persons that is a woman, minority and/or service-disabled veteran, who have a total of at least 51% ownership of the business.

Local Business (LB): a corporation, partnership, sole proprietorship, a veteran owned business, or other legal entity, which is headquartered within Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, or Wilson County for at least six (6) months. For a branch office of a non-headquartered business to qualify as a LB (a “Local Office”), the branch office must be located in one of the above-mentioned counties for at least six (6) months and must employ a minimum of five (5) FTE (full time equivalent) residents of the respective county for use at the local branch office.

Minority Business Enterprise (MBE): a sole proprietorship, partnership or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

(A) Group Member(s) – There are five ethnic categories into which group members may fall in accordance with the Small Business Administration’s identifiers. {(Small Business Act 2(f)(1)(A)(B)(C)} They are African Americans, Hispanic Americans, Asian Americans, and Native Americans legally residing in or that are citizens of the United States of America or its territories. Within these categories, the following classifications are recognized in this region through the Regional Certification Agency:

1. African-American: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian or West Indian.
2. Hispanic-American: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.

² Includes: African American BE, Asian-Pacific American BE, Asian-Indian American BE, Hispanic American BE, and Native American BE.

3. Asian-Pacific American: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
4. Asian-Indian American: Persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Maldives Islands, Bhutan, or Nepal.
5. Native American: Persons having no less than 1/16 percentage origin in any other American Indian Tribes, as recognized by the United States Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents, to include persons who are Eskimos, Aleuts, or Native Hawaiians.

Minority/Woman Owned Business Enterprise (M/WBE): A business that is 51% owned, controlled and managed by one or more women and/or an ethnic minority. The minority/woman group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories.

Small Business Enterprise (SBE): a business structure that is formed with the purpose of making a profit, which is independently owned and operated and which meets the United States Small Business Administration (SBA) size standard for a small business (refer to <http://sba.gov/size> click table), and maintains a certification designation from an authorized certification agency as a Small Business Enterprise or an Emerging Small Business Enterprise.

Woman Owned Business Enterprise (WBE): A sole proprietorship, partnership or corporation owned, operated, and controlled by one or more women who have a total of at least 51% or more ownership.

SAMPLE