



SAMPLE GENERAL CONSTRUCTION AGREEMENT
Project: CONSOLIDATED FACILITIES – SITE CLEARING
Contractor: TBD
Contract Number: 23PW-0005

This General Construction Agreement (this “Agreement”) is entered into as of the **TBD** day of **TBD**, 20**TBD** (the “Effective Date”) and is by and between the Port Authority of San Antonio (“Port San Antonio” or “Owner”), 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 110, San Antonio, Texas 78226, and **[Vendor]**, a **[type of legal entity (i.e., Texas limited liability company, Delaware corporation)]** (hereinafter referred to as “Contractor”), an independent contractor, with its principal place of business at **[Vendor’s complete address]**, for **[name of project or services]** (“Project”) and for an amount not to exceed **[\$[●]]**. Port San Antonio and Contractor are individually referred to as “party” or collectively as the “parties.”

1. Definitions.

“**Certificate of Acceptance**” is a document prepared by Owner (or Architect/Engineer if retained) establishing the date of Final Completion.

“**Change Order**” means a written instrument signed by Owner, Contractor (and Architect/Engineer if retained) stating their agreement upon all of the following which will constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order: (i) the change in the scope of the Work; (ii) the amount of the adjustment, if any, in the Contract Price including any and all direct and indirect costs; and (iii) the extent of the adjustment, if any, in the Contract Time.

“**Contract Documents**” has the meaning set out in Section [6] below.

“**Contractor**” means Port San Antonio’s General Contractor: **[Insert Contractor Name]**

“**Contract Price**” is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

“**Contract Time**” has the meaning set out in Section 3.1 below.

“**Final Completion**” is the actual completion of the Work (or applicable portion thereof) in accordance with the Contract Documents, including any Work covered by Change Orders issued under this Agreement, other than warranty work on Work that has previously been accepted by Owner.

“**Owner’s Architect/Engineer**” or “**Architect/Engineer**” means Kimley-Horn and Associates, Inc.

“**Owner’s Representative**” or “**Property Manager**” means Port San Antonio’s Project Construction Manager, if applicable.

“**Owner**” means the Port Authority of San Antonio.

“**Scope of Services**” means the document attached hereto as **Attachment A**.

¹ Pursuant to Texas Local Government Code § 379B.

“**Services**” means the services Contractor has been engaged to provide to Owner 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 Contractor’s obligations.

“**Substantial Completion**” means the date certified by the Architect/Engineer (if retained) or determined by Owner when: (i) construction of the Work is sufficiently complete in accordance with the Contract Documents so that Owner can beneficially occupy and use the Project for its intended purpose (i.e., full substantial completion in accordance with the Contract Documents, except for minor details of construction, landscaping, decoration, mechanical adjustment, or installation, as applicable, and all testing has been completed so that utilities, operational systems, and equipment are fully operational); (ii) Owner or Architect/Engineer (if retained) has determined (with Contractor’s written assurance) that all punch list work can be completed within 30 days, which determination by the Architect/Engineer (if retained) or Owner will not be unreasonably delayed or denied; (iii) all required governmental inspections applicable to Contractor’s Work have been conducted, and all final approvals required for beneficial occupancy have been obtained from public and quasi-public authorities with jurisdiction over the Project, including a Certificate of Occupancy issued by appropriate authorities, unless failure to obtain such approvals (in Owner’s reasonable opinion) is due to reasons other than the fault of Contractor, its subcontractors, and/or its suppliers; and (iv) all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied. In general, the only remaining Work will be minor in nature so that Owner could occupy the premises, it can be accepted as Finally Completed by Contractor within 30 days following the date of Substantial Completion, and the completion of the remaining Work by Contractor would not materially interfere with or hamper Owner’s normal use of the premises.

“**Work**” means the construction and services required by the Contract Documents and exhibits, whether completed or partially completed, and includes all labor, parts, supplies, equipment, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items needed to produce, construct and fully complete the Work items shown by the Contract Documents and exhibits.

2. Scope of Services and Compensation.

Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Work described herein and complete all the work as specified or indicated in the Contract Documents as represented in Attachment A entitled “Scope of Services and Compensation.”

3. Construction Schedule.

- 3.1 **Contract Time.** Contractor agrees that the Work will be substantially completed within **TBD** calendar days from the date described in the associated Notice to Proceed document (“Contract Time”). Contractor agrees the Work will be Final Complete within 30 calendar days from the date of Substantial Completion.
- 3.2 **Calculation of Days.** It is understood and acknowledged by Contractor that in the reasonable calculation of calendar days within which to perform the Work, Owner has included, as a minimum, the following tasks in the performance period: scheduling, material submittal process; ordering, manufacturing (if applicable) and receipt of materials; time to obtain necessary permits; mobilization; and other incidental items necessary for Contractor to start on-site performance.
- 3.3 **Liquidated Damages.** Owner and Contractor recognize that the time of performance is of the essence in this Agreement and that Owner will suffer an economic loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with terms of this Agreement. Both parties hereto also recognize the delays, expense and difficulties involved in ascertaining the actual loss suffered by Owner if the Work is not substantially completed on time.

Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages and not as a penalty for the delay, Contractor will pay Owner **\$1,000.00** for each calendar day that expires after the time specified in paragraph 3.1 for substantial completion, until the Work is Substantially Complete. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages that will be incurred as a result of delayed completion of the Work. Owner may deduct liquidated damages described in this Section 3.3 from any unpaid amounts then or thereafter due Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor will be payable upon demand to Owner.

3.4 Delays and Extensions of Time

- 3.4.1 Contractor has anticipated ### days to compensate for potential lost time due to adverse weather conditions. Given the inclusion of these days, any request for a time extension based on adverse weather conditions will not be granted unless: (i) the number of weather days impacting the critical path of the Work exceeds the total number of days set forth above; and (ii) Contractor has notified Owner that a weather day is being applied due to adverse weather conditions. The notice will include a description of the weather conditions, their effect upon the progress of the Work, and the amount of lost time due to the adverse weather conditions. Irrespective of whether Contractor is claiming a weather day within those scheduled or in addition to those scheduled, Contractor will provide notice that a weather day is being charged due to adverse weather conditions. The notice will be given to Owner within 72 hours of the occurrence of the adverse weather condition. If a substantial number of Contractor's employees are unable to perform the Work for at least 50% of the usual workday, then the day can be counted as weather day. Weather days will not be calculated for any period when the critical path of the Project is not impacted by the adverse weather event. As used herein, "adverse weather" refers to: (a) weather conditions that prevent Contractor from performing the Work that is currently on the critical path of the construction schedule, or (b) weather that compromises the safe working conditions of the Project site.
- 3.4.2 If the critical path of Contractor's Work is delayed at any time in the commencement or progress of the Work (i) by fire, adverse weather conditions beyond those set forth in Section 3.4.1 above (and approved by Owner), unavoidable casualties, or other causes beyond Contractor's control and not due to or resulting from the negligence, inattention or fault of Contractor or any of its subcontractors ("Excusable Delay"); (ii) by an act or neglect of Owner or of a separate contractor or consultant employed by Owner; or (iii) by changes ordered in the Work by Owner; then the Contract Time may be extended by Change Order for the amount of time Contractor has been actually and directly delayed. Notwithstanding the foregoing, Contractor acknowledges and agrees that neither adjustment in the Contract Time nor adjustment in the Contract Price will be permitted to the extent that (a) any delay is caused by the negligence, errors, omissions or fault of Contractor or its subcontractors or (b) Contractor failed to provide a notice as set forth in Section 3.4.1 above. Contractor will cooperate with Owner to at all times minimize and mitigate the impact of any delay to completion of the Work.
- 3.4.3 This Section 3.4 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Except as may otherwise be expressly provided in the Contract Documents, extensions of time will be Contractor's sole remedy for delay, including any Excusable Delay, unless the delay is caused by Owner's negligent acts or omissions, intentional interference, fraud, or misrepresentation or Owner approves any delay costs as part of a Change Order, understanding that (i) Owner is not obligated to do so, and (ii) no such costs will be paid if compensated by an insurance carrier. In the event of any delay entitling Contractor to an increase in Contract Price, Contractor's recovery will be limited to the increase, if any, of direct costs incurred by Contractor in performing the Work as a result of that portion of delay or delays which

cause the Contract Time to be extended. Direct costs do not include profit or any consequential damages, lost opportunity costs, impact damages, or other similar remuneration. Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, will not under any circumstances be construed as interference with Contractor's performance of the Work. Nothing contained herein will prohibit recovery by Owner of liquidated damages for Contractor's delay pursuant to this Agreement. Contractor will not be compensated nor given extensions of time for delays that are unexcused.

- 3.4.4 Contractor will not be entitled to extensions of time or any increase in Contract Price as a result of price escalations in the marketplace, tariffs enacted before the effective date of this Agreement, or increases due to labor or material shortages or delay in deliveries unless the same are the result of a cataclysmic event occurring after the execution of the Contract of an adverse nature and then only to the extent the event occurs within a 50-mile radius of the Project.
- 3.4.5 If Contractor intends to make a claim for an increase in the Contract Time attributable to adverse weather conditions beyond those provided above, written notice as provided in Section 3.4.1 will be given notwithstanding any other provision to the contrary. Contractor's claim will include an estimate of the time and its probable effect on the progress of the Work. In the case of a continuing delay, only one claim is necessary.
- 3.4.6 In the event Contractor falls behind schedule at any time, for any reason which does not justify an extension of the Contract Time under this Section 3.4, Contractor will develop and deliver a recovery plan to Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, re-sequencing of the Work and other steps Contractor will take to meet the requirements of this Agreement with regard to the Contract Time. Contractor will not be entitled to an increase in the Contract Price for the scheduled recovery efforts, except as to causes of delay to the critical path as specified in this Section 3.4. No approval or consent by Owner of any plan for re-sequencing or acceleration of the Work submitted by Contractor pursuant to this Section will constitute a waiver by Owner of any liquidated damages which Owner may suffer by reason of such re-sequencing or the failure of Contractor to meet the Contract Time or other requirements of this Agreement with regard to the Contract Time.

4. Payment Procedures.

- 4.1 **Progress Payments.** Contractor will submit a valid "Application for Payment" to Owner's accounts payable office (Port San Antonio, Attn: Accounts Payable Office, 907 Billy Mitchell Blvd., Suite 110, San Antonio, Texas 78226, or to accountspayable@portsanantonio.us (copying ContractingInfo@portsanantonio.us)) within 15 days of completion of Services. A valid invoice will contain all applicable information (i.e., contract numbers as provided in writing) and allow Owner to verify the amount of itemized services/supplies provided. Owner will make payment within 30 days of receipt of a valid invoice. Owner will make progress payments on account of the Contract Price on the basis of Contractor's accurate Application for Payment on or about the 30th day after submittal of the Application for Payment each month as provided below. All progress payments will be on the basis of the progress of the Work measured by applicable schedule of values.
 - 4.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to 90% of the amount requested in the Application for Payment, with 10% remaining as Owner's retainage for the project, to be released by Owner in accordance with this section.
 - 4.1.2 Upon Substantial Completion, Owner will pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price, less such amounts Owner will determine in accordance

with the applicable project specifications and those provisions described in the contract documents, attached hereto and made a part hereof.

- 4.2 **Final Payment.** Upon Final Completion and acceptance of the Work in accordance with terms described herein, Owner will pay the remainder of the Contract Price approved by Owner's Representative.
- 4.3 **Disputed Amounts/Late Payments.** If there is a dispute with respect to any portion of an invoice, Owner will pay the undisputed portion and provide written details specifying the basis of any dispute. If Owner fails to pay when due any properly invoiced and undisputed amount, Contractor may be entitled to interest for overdue payments pursuant to the Texas Prompt Payment Act.
- 4.4 **Taxes.** Port San Antonio is a Texas defense base development authority, which is 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 Contractor in performance of this Agreement, and Contractor will not invoice or charge Port San Antonio for such taxes. Contractor will be provided with a sales tax exemption certificate upon request for such purchases or rentals.
- 4.5 **Claims for Additional Cost.** If Contractor wishes to make a claim for an increase in the Contract Price, written notice will be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property. Except as otherwise provided in this Agreement, in calculating the amount of any claim, the following standards apply: (i) no indirect or consequential damages will be allowed; (ii) no recovery will be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly; (iii) damages are limited to extra costs specifically shown to have been directly caused by a proven wrong; and (iv) no damages will be allowed for home office overhead or other home office charges or any "Eichleay formula" calculation as discussed in *Chilton Ins. Co. v. Pate & Pate Enter., Inc.*, 930 S.W.2d 877, 892 (Tex. App.-San Antonio 1996, writ denied).

5. Representations and Warranties.

- 5.1 **Contractor's Representations.** In order to induce Owner to enter into this Agreement, Contractor makes the following representations to Owner:
 - 5.1.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, the Work, and with all of Port San Antonio's rules, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
 - 5.1.2 Contractor has made, or caused to be made, examinations and investigations of information as it deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.
 - 5.1.3 Contractor has given Owner advanced written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents prior to execution and the written resolution thereof by Owner is acceptable to Contractor.
 - 5.1.4 Contractor is skilled and experienced to responsibly perform the type of work described in the Contract Documents in a timely manner.

- 5.1.5 Contractor has used due diligence to acquaint itself with existing conditions, circumstances, and limitations affecting the Work and the Project site that are reasonably observable and/or to which Contractor has access, including, without limitation, all site and local conditions. Dimensions and clearances necessary to do the Work, as indicated on the Drawings and contained in Specifications, will be verified by Contractor at the job site, and Contractor will report any discrepancies thereof to Architect/Engineer (if retained) and Owner for adjustment before any Work affected thereby is prosecuted. Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. Price escalations in the marketplace will not be reimbursed by Owner in excess of the Contract Price and will not cause the Contract Price to be increased other than allowed in Section 3.4.4.

6. Contract Documents.

6.1 **List of Contract Documents.** The Contract Documents that comprise the entire agreement between Owner and Contractor are attached to this General Construction Agreement, made a part hereof and consist of the following:

- i. Contractor's Bid Form;
- ii. Contractor's Bid Schedule (Bid dated, **August 4, 2023**);
- iii. Contractor Certifications (B-1-42)
- iv. this General Construction Agreement;
- v. Performance Bond - (Contractor will provide if applicable);
- vi. Labor and Materials Payment Bond - (Contractor will provide if applicable);
- vii. Certificate of Insurance;
- viii. Notice to Proceed;
- ix. Application and Certificate for Payment;
- x. Certificate of Substantial Completion;
- xi. Certificate of Completion;
- xii. Contractors Affidavit Regarding Settlement of Claims;
- xiii. DBE Participation Progress Report;
- xiv. Any amendment, modification, including Change Orders, duly delivered after execution of Agreement;
- xv. All documents referred to in the Scope of Services and Compensation set out on **Attachment A**;
- xvi. Addenda (if applicable, list and include date of issuance); and
- xvii. Certified Payrolls.

6.2 **Amendments/Change Orders.** There are no Contract Documents other than those listed above in this Section 6. The Contract Documents may only be altered, amended or repealed by an amendment or Change Order executed and agreed to by the parties hereto.

7. Subcontracting.

7.1 **Subcontractors.** Contractor agrees that any subcontractor not part of the initial team will require Owner'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 "Notices" section below) with a copy to ContractingInfo@portsanantonio.us. No such approval will relieve Contractor from any of the obligations of this Agreement with Owner. Contractor will require each subcontractor, to the extent Services are performed by the subcontractor, to be bound by the terms of this Agreement and to assume towards Owner, to the extent applicable, all the responsibilities and obligations which Contractor by this Agreement assumed towards Owner. Contractor further agrees that it will remain primarily responsible for



the Services performed under this Agreement, unless Owner and Contractor agree otherwise, and Contractor will supervise the work of subcontractors to ensure that the work performed relating to the Services is in accordance with applicable professional standards. Contractor will keep such records and furnish reports and information relative to the subcontractor or subcontractor’s employees, agents, etc. as Owner may reasonably request. Contractor represents that it will comply with Tex. Gov’t Code Section 2252.032(d) regarding the maximum amount retained from subcontractors on public works contracts.

7.2 **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.

8. Bonds & Insurance Requirements.

8.1 Insurance.

- 8.1.1 Contractor agrees to carry and keep insurance in full force during the term of this Agreement sufficient to fully protect Owner 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 this Agreement by Contractor, Contractor’s agents or employees, a Contractor subcontractor, or its agents or employees. Contractor’s insurance will be primary to and non-contributory with any self-insurance and/or insurance maintained by Owner.
- 8.1.2 Contractor agrees to maintain the below listed insurance to cover all of its own personnel engaged in performing services for Owner under this Agreement in not less than the following amounts:

Type of Insurance	Minimum Limits Required <i>Per Claim/Occurrence</i>	Minimum Limits Required <i>Aggregate policy Limits</i>
<u>Commercial General Liability</u>		
Bodily Injury / Property Damage	\$2,000,000.00	\$4,000,000
Products/Completed Operation (aggregate)		\$4,000,000
Personal and Advertising Injury (aggregate)		\$2,000,000
Medical Expense limit (any one person)	n/a	n/a
<u>Commercial Automobile Liability</u> for all vehicles (owned/leased vehicles; non-owned vehicles; hired vehicles). Bodily injury and property damage: combined single limit any one accident	\$1,000,000	\$1,000,000

Type of Insurance	Minimum Limits Required <i>Per Claim/Occurrence</i>	Minimum Limits Required <i>Aggregate policy Limits</i>
<u>Umbrella Excess Liability Insurance</u>	\$2,000,000	\$2,000,000
<u>Worker’s Compensation – Employer’s Liability</u>	Statutory Limits	Statutory Limits
<u>Employment practices liability</u>		
<ul style="list-style-type: none"> • Claims relating to the employment practices of Contractor 	\$1,000,000	
<ul style="list-style-type: none"> • By disease 	\$1,000,000	
<ul style="list-style-type: none"> • For each accident 	\$1,000,000	
<ul style="list-style-type: none"> • For each employee 	\$1,000,000	
<u>Contractor’s Pollution Liability</u> including coverage for microbial matter (if applicable)	\$5,000,000	\$5,000,000

- 8.1.3 Contractor will add Owner 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 Contractor might carry. The Commercial General Liability Policy and Excess Liability Policy (Umbrella Form) will be of an “occurrence type” policy. Workers’ compensation and employer’s liability policies will provide a waiver of subrogation in favor of Owner. Other appropriate coverages will also contain a similar waiver of subrogation clause. The Commercial General Liability Policy will also include protection against claims insured by the usual personal injury liability coverage and a “protective liability” endorsement to ensure contractual liability assumed by Consultant under the Section titled “Indemnification.”
- 8.1.4 This insurance will be of the “all risks” type and will protect Contractor and Owner from all insurable risks of physical loss or damage to equipment and materials in transit to the job site and until Owner receives the equipment and materials at the job site. The coverage amount will be not less than one-half of the full amount of the total contract. Transportation insurance will provide for losses to be payable to Contractor and Owner as their interests may appear.
- 8.1.5 Contractor will not commence any Work under this Agreement until he has obtained all the insurance coverage required under this Section 8 and such insurance has been approved by Owner, nor will Contractor allow any subcontractor to commence work on this Contract until the insurance required by the subcontractor has been so obtained and approved.
- 8.1.6 Unless otherwise provided herein, Contractor will purchase and maintain property insurance for all materials and equipment located on the job site to the full insurable value thereof (subject to any deductible amounts as may be provided herein, or required by laws and regulations). This insurance will include (i) the interests of Owner, Contractor, subcontractors, Project Manager and applicable Architect/Engineer’s and consultants, all of whom will be listed as insured, or additional insured parties; (ii) will insure against the perils of fire and extended coverage and will include “all risk” insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided herein; and (iii) will include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or

replacement of any insured property. Any cost of damage or loss resulting from earthquake, flood or rising water will be borne by Owner. If not covered under the “all risk” insurance, or otherwise provided herein this Agreement, Contractor will purchase and maintain similar property insurance on all material and equipment stored on and off the site, or in transit, when such portions of materials and equipment are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Section 8.1 will be of an “occurrence” type, and contain a provision that the coverage afforded will not be canceled or materially changed until at least 30 days prior written notice has been given to Owner.

8.2 **Bonds.** Subsequent to the receipt of this Agreement, and within 3 days after the prescribed forms are presented for signature, Contractor (or subcontractors) will execute and deliver to Owner (or Contractor) a construction agreement, Certificate of Insurance and applicable Performance and Payment Bonds, in the format provided by Owner in such number of copies as Owner may require in accordance with the following parameters:

- 8.2.1 For a Contract in excess of \$100,000.00, a Performance Bond will be executed in the full amount of the Contract Price conditioned upon the faithful performance of the Work in accordance with the plans, specifications, and Contract Documents; said Performance Bond will be solely for the protection of Owner.
- 8.2.2 For a Contract in excess of \$25,000.00, a Payment Bond will be executed in the full amount of the Contract Price, solely for the protection of all proper claimants supplying labor and material in the prosecution of the Work provided for in the Contract Documents, for the use of each such claimant perfecting a proper claim.
- 8.2.3 Contractor will furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all Contractor’s obligations under the Contract Documents. **These bonds will remain in effect at least until 12 months after the date when final payment becomes due**, except as otherwise provided by law or regulation, or by the Contract Documents. Contractor will also furnish such other bonds as may be required by Owner. All bonds will be in the forms prescribed by law or regulation, or the Contract Documents, with a minimum rating of “A” by A.M. Best Company and listed in the US Department of the Treasury; Bureau of the Fiscal Service; Circular 570 as a certified company in the state of Texas with the penal sum within listed underwriting limitation. Contractor and its surety understand that the bonds will automatically be increased in the amount of any additive Change Orders signed by Owner and Contractor. Contractor’s failure to provide bonds, if required, will constitute a material breach of this Agreement, entitling Owner to terminate this Agreement and to exercise all rights, remedies and recoveries under the Contract Documents, at law and in equity. All refunds, if any, from any such premiums will accrue to Owner. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, Contractor will promptly furnish a copy of the bonds or will authorize a copy to be furnished.
- 8.2.4 If the surety on any bond furnished by Contractor is declared a bankrupt, or becomes insolvent, or its right to do business is terminated in the state of Texas, or it ceases to meet the requirements of this section, Contractor will within 5 days thereafter, substitute another bond or surety, both of which must be acceptable to Owner.

9. Safety/Underground Work/Emergencies

9.1 Safety & Security. Port San Antonio is committed to the highest safety and security standards on behalf of its employees and customers. Contractor 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 and security policies when outside the bounds of the job site or Contractor's safety program, whichever is most stringent. If Contractor is provided access to a Port San Antonio customer's premises, Contractor agrees to comply with the customer's safety and security policies. Nothing contained in this Section 9.1 or elsewhere in the Contract Documents will be construed as expanding or enlarging Owner's obligation, if any, with respect to safety issues or Contractor's safety programs or protocol.

9.1.1 As between Owner and Contractor, Contractor is responsible for any and all safety issues relating to the Work. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement. Contractor will monitor the establishment and execution of effective safety practices known to the industry, as applicable to the Work on this Project, and the compliance with all applicable laws. This will include, but not necessarily be limited to, review of the safety programs of each of Contractor's subcontractors.

9.1.2 Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to: (i) all employees performing the Work and other persons and organizations who may be affected thereby; (ii) all of the Work and materials and equipment to be incorporated therein, whether in storage on or off the job site; and (iii) other property at the site, or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

9.2 Locating Underground Obstacles and Utilities. Contractor is responsible for locating underground obstacles. Neither Owner nor its Project Manager and/or Owner's Engineer warrant that all sewer, waterlines, electric lines, gas lines, telephone lines and other underground obstacles have been correctly identified. Owner will render reasonable assistance to Contractor to determine the location of existing utilities by making available such maps, records, and other existing available information that is accessible to Owner when requested to do so by Contractor. Owner does not warrant the accuracy of any grades, elevations, dimensions, or locations of utilities, services or underground obstacles given on any drawings issued by Owner or Architect/Engineer, or work installed by other contractors, all of which Contractor will verify prior to starting the Work. Such information is provided to Contractor as a matter of convenience and does not substitute for Contractor using due diligence to reasonably observe and or to access space to determine errors, inconsistencies or omissions. Contractor will exercise caution to prevent damage to existing facilities during the progress of the Work, taking care to locate same, where possible, in advance of the actual Work so as to allow re-alignment or adjustment without adversely affecting project schedule or Contractor's production. Existing utilities, driveways, culverts, storm sewer inlets and laterals, and other public or private property that is destroyed or removed during the construction will be replaced to its original or better condition by and at the cost of Contractor. Temporary drainage is to be provided as necessary. Any errors due to Contractor's failure to so verify all such grades, elevations, dimensions, or locations will be promptly rectified by Contractor at no additional cost to Owner.

9.3 Safeguards for Utility and Underground Work. Contractor will comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury or loss; and will erect and maintain all necessary safeguards for such safety and protection. Contractor will notify owners of adjacent property of underground facilities and utility owners, when prosecution of the Work may affect them, and will cooperate with them in the protection, removal, relocation and replacement of their property.

9.4 Emergencies; Notice to Owner. In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, Contractor, without special oral instruction or authorization from Project Manager or Owner, is obligated to act to prevent threatened damage, injury or loss. Contractor will give Project Manager prompt written notice if Contractor believes that any significant changes in the Work, or variations from the applicable Contract Documents, have been caused thereby. If Project Manager determines that a change in the Contract Documents is required because of the responsible action taken by Contractor in response to an emergency, a Change Order will be issued to document the consequences of the changes or variations.

9.5 No Illegal Activity. At no time will any individual engage in any illegal activities at the job site, consume at or bring alcoholic beverages onto the job site, possess or use illegal drugs at the site. Contractor understands and agrees that if its employees or any other person carrying out the Work engage in unsafe, inappropriate, offensive or disorderly conduct or harasses Owner, its employees or other tenants and their invitees, Owner may require Contractor to remove such offending employees from site. Contractor will only employ labor on the job site or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. Contractor will require the same of its subcontractors and will also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance. Upon Owner's instruction, Contractor may not continue to use any employee, including the superintendent, or any subcontractor, supplier or vendor in the performance of the Work with respect to whom Owner objects.

10. Corrective Measures. If within one year after the date of issuance of the Certificate of Acceptance, or such longer period of time as may be prescribed by laws or regulations, any Work is found to be defective, Contractor will promptly, without cost to Owner, and in accordance with Owner's written instruction, either correct such defective Work, or, if it has been rejected by Owner, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected, or the rejected Work removed and replaced, and the costs of such removal and replacement (including but not limited to fees and charges of Architect/Engineer (if applicable) and other professionals) will be paid by Contractor. In special circumstances where a particular item of equipment is placed in continuous service at Owner's direction before acceptance of all of the Work, the correction period for that item may start to run from an earlier date, if so provided in the Specifications, or by written amendment.

11. Final Inspection. Upon written notice from Contractor that the entire Work, or an agreed portion thereof is complete, Project Manager and Architect/Engineer (if applicable), will make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor will promptly take such measures as are necessary to remedy such deficiencies. A qualified person representing Contractor will be present at this final inspection to demonstrate the systems and prove the performance of the equipment. Prior to this inspection, all Work will have been completed, tested, balanced and adjusted and in final operating condition.

12. Termination.

12.1 Termination for Cause. Upon the occurrence of any one or more of the following events set out in Sections 12.1.1 through 12.1.10, Owner may, after giving Contractor and the surety 7 days written notice, and to the extent permitted by laws and regulations: (i) terminate the Work of Contractor; (ii) exclude Contractor from the site and take possession of the Work and incorporate in the Work all materials and equipment stored at the site, or for which Owner has paid Contractor, but which are stored elsewhere; and (iii) finish the Work as Owner may deem expedient. In such case, Contractor will not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct costs of completing the Work (including but not limited to fees and

charges of engineers, Architect/Engineers, attorneys and other professionals and court costs) such excess will be paid to Contractor or his surety. If such costs exceed the unpaid balance, Contractor or surety will pay the difference to Owner. Such costs incurred by Owner will be approved as to reasonableness by Project Manager and incorporated into a Change Order, but when exercising any rights or remedies under this Section, Owner will be required to obtain the lowest price for the Work performed.

- 12.1.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition, or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
 - 12.1.2 If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
 - 12.1.3 If Contractor makes a general assignment for the benefit of creditors;
 - 12.1.4 If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of attempting to enforce a lien against such Contractor property, or for the purpose of general administration of such Contractor property, for the benefit of Contractor's creditors;
 - 12.1.5 If Contractor admits in writing an inability to pay its debts generally as they become due;
 - 12.1.6 If Contractor fails to diligently prosecute the Work in a timely, workmanlike, and careful manner and in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the schedule established by the parties, as revised from time to time);
 - 12.1.7 If Contractor disregards laws or regulations of any public body having jurisdiction;
 - 12.1.8 If Contractor disregards the rights of Owner;
 - 12.1.9 If Contractor fails to purchase the required insurance or payment and performance bonds; or
 - 12.1.10 If Contractor otherwise violates in any substantial way any provisions of the Contract Documents.
- 12.2 **Owner's Reservation of Rights.** Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- 12.3 **Termination for Owner's Convenience.** Upon 7 days written notice to Contractor and Project Manager (if applicable), Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate this Agreement. In such case, Contractor will be entitled to receive payment for (i) Work properly executed in accordance with the Contract Documents prior to the effective date of termination, including any overhead and profit for Work completed, as measured by the Contract Price allocated by the schedule of values, and (ii) the direct, actual and unavoidable (by the exercise of reasonable care) costs incurred by Contractor in terminating the Work and demobilizing

the site, including the cost of canceling subcontracts and purchase orders not assumed by Owner. Contractor will also be entitled to payment for materials timely fabricated off the Project site and delivered and stored in accordance with Owner's instructions. Owner will not be liable for and Contractor will not be entitled to payment for work not performed, nor to overhead or profit on Work not performed.

- 12.4 **Suspension for Owner's Convenience.** Owner may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than 90 cumulative (not necessarily consecutive) calendar days by notice in writing to Contractor and Project Manager (if applicable), which will fix the date on which Work will be resumed. Contractor will resume the Work on the date so fixed. Contractor may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension and pursuant to Section 3.4 or Section 4.5.

13. Indemnification.

- 13.1 **GENERAL.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN SECTIONS 13.2 BELOW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND OWNER AND ITS DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY AN "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR OR ANY SUBCONTRACTOR PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION (i) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER APPLICABLE LAW BY CONTRACTOR OR ANY SUBCONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; (ii) ANY LIEN OR BOND CLAIM ASSERTED BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT; AND (iii) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY; BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ITS SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. In claims against any person or entity indemnified under this Section 13.1 by an employee (or the survivor or personal representative of such employee) of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 13.1 will not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor will procure liability insurance covering its obligations under this Section 13.1.

13.2 EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTIONS 13.1, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM, OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ANY SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT, IN SUCH EVENT, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE EMPLOYEE.

14. Limitation of Liability.

14.1 No Consequential Damages. Neither party (nor its employees, agents, suppliers or affiliates) will be liable to the other for any lost profits, including that related to unperformed work, or any indirect, special, incidental, punitive, or consequential loss or damage of any kind, including but not limited to principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation arising in connection with this agreement, even if the party has been advised or should be aware of the possibility of such damages.

14.2 Exclusions from Waiver of Consequential Damages. Nothing in this 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 Contractor's indemnification obligations for third party claims or the recovery, or Contractor's obligation to pay liquidated damages, as set forth in this Agreement, or damages losses or costs incurred by Owner to the extent such loss or damage is covered by any insurance policy related to the Project.

15. Records.

15.1 Records. Contractor will retain any and all documents and accounting records produced as a result of this Agreement for a period of 4 years (hereafter referred to as "retention period") from the date of termination of this Agreement and cause its subcontractors to do the same. All records will be made available to Owner and/or any of Owner's 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, Contractor will retain the records until the resolution of such litigation or other such questions.

15.2 Preservation of Contract Information. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Contractor agrees that this Agreement can be terminated by Owner if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

16. Dispute Resolution

- 16.1 Any dispute or difference between the parties arising during the term of this Agreement, out of or in connection with this Agreement will be referred for resolution to the senior management of the parties. Any such dispute or difference which has not been resolved as aforesaid within 20 calendar days from the date the dispute or difference is first so referred for resolution, will, if the parties are unable to resolve the matter through another form of alternative dispute resolution, be referred to mediation.
- 16.2 The electing party may initiate such mediation by giving 10 calendar days' written notice to the other party of its intention to do so. The mediation will 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 20 calendar days of such notice, each party will select a list of 3 mediators within 30 calendar days of such notice, and the parties agree to act in good faith to select an agreed upon mediator. Each party involved will be responsible for all expenses and costs of its officers, employees, agents, or the like related to such mediation.
- 16.3 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.
- 16.4 **Continuing Contract Performance.** Pending final resolution of a claim, except as otherwise agreed in writing or as provided in Section 4.1 and Article 12, the Contractor will proceed diligently with performance of the Contract and the Owner will continue to make payments in accordance with the Contract Documents.

17. Miscellaneous.

- 17.1 **Assignment.** No assignment by a party hereto of any rights under, or interest in, the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such prior consent (except to the extent that this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 17.2 **Successors.** Owner and Contractor each binds itself and its partners, successors, assigns and legal representatives to the other party hereto, their partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 17.3 **Invalidity.** The invalidity or unenforceability of any provision of the Contract Documents will not affect the validity, legality or enforceability of any other provision of the Contract Documents.
- 17.4 **Laws.** This Agreement and the Contract Documents are subject to all applicable laws, statutes, codes, ordinances, rules and regulations including any and all federal, state and local statutes, laws, rules, regulations, ordinances, codes, and guidelines, restrictions and requirements of any governmental authority pertaining to Contractor's services, the project site, Contractor's employees, subcontractor's employees, and/or the Work, including, without limitation (i) all applicable zoning ordinances, building codes, and fire and life safety codes; (ii) environmental laws and flood disaster laws and regulations (iii) applicable storm water, street, utility and other related infrastructure requirements; (iv) requirements related to the use, removal, storage, transportation, disposal and remediation of hazardous

materials; (v) laws pertaining to equal opportunity, affirmative action, and discrimination; (vi) laws pertaining to health or safety, including without limitation the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), as amended and any applicable state programs, rules and regulations approved or provided thereunder; and (vii) all accessibility laws and codes including but not limited to the Texas Accessibility Standards of the Architectural Barriers Act (TAS), Chapter 469 of the Texas Government Code, Elimination of Architectural Barriers, the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), and the 2010 ADA Standards for Accessible Design.

- 17.5 **Enforceability.** In the event of default by Contractor under the Contract Documents, Owner will have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents. The exercise of any one right or remedy will be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.
- 17.6 **Interpretation.** If any action at law or in equity is necessary by Owner to enforce or interpret the terms of the Contract Documents, Owner will be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which Owner is entitled.
- 17.7 **Applicable Law and Venue.** This 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 in Bexar County, Texas.
- 17.8 **Adherence to Laws.** Contractor agrees that in carrying out its duties and responsibilities under this Agreement, it will 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 Owner to be in violation of any laws, decrees, rules, or regulations in effect in the United States. **CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY OWNER AND ITS OFFICERS, BOARD MEMBERS, EMPLOYEES AND AGENTS AGAINST ANY CLAIM OR LIABILITY FROM OR BASED ON ANY VIOLATION OF THE SAME.**
- 17.9 **Data Privacy.** Contractor agrees that if, as part of the performance of this 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 Contractor or Port San Antonio or a third party to whom the data belongs or to whom it refers is located, it will comply with such laws, and will 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. Contractor will not sell or use Port San Antonio data other than as may be expressly authorized by Port San Antonio. Contractor will not transfer (logically or physically) Port San Antonio data to any country or territory outside the United States of America unless required in Contractor's performance under this Agreement, provided Contractor notifies Port San Antonio prior to such transfer. Contractor will not provide Port San Antonio data to any subservice or subcontractor unless expressly authorized by Port San Antonio. Contractor will 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 will not exceed 24 hours after Port San Antonio's request.
- 17.10 **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

Contractor:
[name]
[phone number]
Email: [email]@

17.11 **Notice.** Any legal notice or other formal communication pursuant to business contemplated herein will be in writing and will 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 will 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 Authority of San Antonio
907 Billy Mitchell Blvd., Suite 110
San Antonio, Texas 78226-1802
Attention: President & CEO
Email: LegalNotices@portsanantonio.us
Telephone: (210) 362-7800

If to Contractor:

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

17.12 **Conflict of Interest.** During the Term of this Agreement, Contractor will 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: (i) those conflicts which prevent Contractor or its agents or representatives from professionally and ethically carrying out all terms of this Agreement; (ii) an organizational Conflict of Interest, which exists when, because of other activities or relationships with third-parties, Contractor is unable to render impartial assistance, advice, or Services to Owner or Contractors’ objectivity is otherwise impaired; or (iii) Contractor gains an unfair competitive advantage as a result of performance under this Agreement.

17.13 **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 will be deemed to have been made or will be effective unless expressed in writing and signed by that party.

17.14 **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 will comply with Port San Antonio’s brand standards.

17.15 **Press Releases/Publications.** Contractor will not disclose the terms of this Agreement or make representations regarding the relationship between the parties as part of a press release or publication without the prior written consent of Owner.

17.16 **Survival.** The following provisions will survive expiration or termination of the Agreement: Limitations of Liability, Indemnification, Insurance, Miscellaneous, and any other provisions that by their nature are intended to survive expiration or termination.

17.17 **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 will be determined on a “calendar” day basis. If any day for performance, delivery, review or approval (other than Contract Time) falls on a Saturday,

Sunday or legal holiday (state or federal) in San Antonio, Texas, the time therefor will be extended to the next business day.

- 17.18 **Attorneys' Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default hereof, the prevailing party will 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 will be deemed to have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment, provided, however, that any settlement entered into by the parties will 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.
- 17.19 **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 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.
- 17.20 **Public Information Act.** Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in Port San Antonio's possession, including materials submitted by Contractor, may be subject to the provisions of the Public Information Act, Texas Government Code, Chapter 552. If Contractor 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, Contractor will 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 will 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 will control in the event of a conflict between the procedures described in this section and the applicable law.
- 17.21 **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 Contractor and Port San Antonio.
- 17.22 **Workers' Compensation Insurance.** By signing this Agreement, Contractor certifies that it provides workers' compensation insurance coverage for all employees employed on this Project pursuant to Tex. Lab. Code ("Code") Sections 401 and 406.096(a): (i) As required by Section 406.096(b) of the Code, Contractor must require each subcontractor to certify in writing to Contractor that the subcontractor provides workers' compensation insurance coverage for all of the employees it employs on this Project. Contractor must provide these certifications to Owner within 10 calendar days of request; and (ii) Contractor will comply with TWCC Rule 28 TAC Sect. 110.110 including but not limited to the notice, reporting, record keeping and coverage requirements therein.
- 17.23 **Prevailing Wage Law.** If public funds (which includes funds coming from Owner unless such funds will be reimbursed by a tenant under a lease with Owner) are intended to be used for the construction of the Project, all persons employed in the performance of the Work under this Agreement, or any subcontracts hereunder, will be paid not less than the general prevailing rates of per diem, holiday, and

overtime wages prevailing in the locality for Work of a similar character pursuant to Chapter 2258 of the Texas Government Code (“Texas Prevailing Wage Law”). Failure to comply with this provision will subject Contractor to the penalties prescribed in the Texas Prevailing Wage Law including the forfeiture as a penalty to Owner the sum of \$60.00 for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the stipulated rate for any Work done under this Agreement, whether by Contractor, or by any subcontractor working under Contractor. Owner has adopted the local prevailing and adopted wage rates derived from the most current applicable federal prevailing wage rates for Bexar County, Texas, as published by the United States Department of Labor, Dallas, Texas immediately prior to the execution of this Agreement, which is incorporated by reference herein for all purposes and must be attached as an exhibit to this Agreement.

- 17.24 **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.

- 17.25 **Amendments.** Changes to this Agreement may be accomplished only by the issuance of a mutually approved written amendment hereto.
- 17.26 **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 this Agreement have been obtained and that each party has the right and authority to enter into and perform its covenants contained in this Agreement.
- 17.27 **Use of Pronouns.** Pronouns, including without limitation, “he,” “she” and “it,” when used in reference to any person or party hereto, will be deemed applicable to entities or individuals, male or female, singular or plural as appropriate in any given case.
- 17.28 **Signatures.** Any documents signed in connection with this 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 will 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 page left blank.]



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

OWNER:
PORT AUTHORITY OF SAN ANTONIO

CONTRACTOR:
TBD

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

SAMPLE

ATTACHMENT A
Scope of Services and Compensation
Project: CONSOLIDATED FACILITIES – SITE CLEARING
Contractor: TBD
Contract Number: 23PW-0005

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

Refer to the associated project plans and specifications, and related project documents

2. **Schedule for services.** Contractor will provide Services pursuant to the following schedule:

Milestone	Completion Deadline

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:

Disadvantaged Business Goals	
<i>NAICS DESCRIPTION</i>	<i>DBE%</i>
<i>Land Drainage Contractors</i>	<i>20.83%</i>
<i>Electrical Contractors and Other Electrical Contractors and Other Wiring Installation Contractors</i>	<i>4.11%</i>
<i>Specialized Freight Trucking</i>	<i>7.59%</i>
<i>Highway, Street, and Bridge Construction</i>	<i>34.29%</i>
<i>Site Preparation Contractors</i>	<i>7.88%</i>

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.

