ATTACHMENT B

FIRST AMENDED LOCAL PREFERENCE PROGRAM

A. Introduction.

The purpose of this Local Preference Program (the "Program") is to ensure that local businesses of every size are encouraged to participate in contracting and procurement at the Port of Corpus Christi Authority of Nueces County, Texas (the "Port Authority"). The Program is consistent with the Port Authority's mission: "Leverage commerce to drive prosperity."

The competitive bidding requirements in Section 60.404 of the Texas Water Code state that specifications must indicate whether a local preference program adopted by the Port Authority applies and, if so, where a copy of the program requirements may be obtained.

Under Section 60.458 of the Texas Water Code, the Port Authority is permitted to set the criteria and factors that the Port Authority may consider in determining to whom to award a contract, as well as incorporating other contracting programs, such as a local preference program, as may be approved by the Port Authority.

This Program sets out the principles under which preference to local businesses (as may be defined from time to time) may be granted for certain Port Authority procurements.

B. Program Policy Statement.

It is the policy of the Port Authority to use its spending powers in a manner that:

a. Promotes fiscal responsibility and maximizes economic benefits to the local economy by utilizing all available opportunities to contract with local businesses;

b. Places an affirmative duty on Port Authority staff to grant a procurement preference to local businesses in accordance with the standards of this Program, unless doing so would be clearly contrary to the best interests of the Port Authority; and

c. Is reasonable and fair.

C. Program Authority and Construction.

Texas Water Code chapters 60 and 62, and particularly Sections 60.404(d) and 60.458 as follows:

Sec. 60.404. COMPETITIVE BIDDING REQUIREMENTS.
(d) The specifications must:
(1) describe in detail the item to be acquired;
(2) require that bids be sealed;

(3) require the attachment to the bid of a certified check, cashier's check, or bidders bond, if security is required in connection with the bid; and
(4) indicate whether a small business development program, local preference program, or other contracting program adopted by the district applies to the purchase and, if so, where a copy of the program requirements may be obtained.

Sec. 60.458. PURCHASE CONTRACT AWARD CRITERIA. Except as provided by this subchapter, in determining to whom to award a contract, the district may consider:
(1) the purchase price;
(2) the reputation of the vendor and of the vendor's goods or services;
(3) the quality of the vendor's goods or services;
(4) the extent to which the goods or services meet the district's needs;
(5) the vendor's past relationship with the district;
(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized business, and on the district's small business development program, local preference program, or other contracting program adopted by the district, if any;
(7) the total long-term cost to the district to acquire the vendor's goods or services; and
(8) any other relevant factor specifically listed in the request for bids or proposals.

D. Definitions.

As used in this Program, the terms below have meanings as shown.

Headquartered means the place where a business entity's officers are located and from which the officers direct, control and coordinate the entity's activities.

Joint Venture means a collaboration of for-profit business entities, in response to a solicitation, which is manifested by a written agreement between two (2) or more independently owned and controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture.

Local Area means Nueces and San Patricio Counties.

Local Business means a business that is either: (1) headquartered in the Local Area; or (2) has an established place or places of business in the Local Area where members of the entity's workforce are regularly based. A location utilized solely as a post office box, mail

drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as an established place of business.

E. Program Purchases.

a. Purchases of Personal Property using Competitive Sealed Bids.

i. Personal property purchase contracts of Fifty Thousand Dollars ($50,000.00) to under Five Hundred Thousand Dollars ($500,000.00).

1. In purchasing any personal property that is not affixed to real property, if the Port Authority receives one or more bids from Local Businesses and if the lowest bid by a Local Business is within five percent (5%) of the lowest bid price received by the Port Authority from a bidder who is not a Local Business, the Port Authority shall award a contract that requires an expenditure of Fifty Thousand Dollars ($50,000.00) to under Five Hundred Thousand Dollars ($500,000.00) to the Local Business.

2. When a bidder is a joint venture, each joint venture partner must meet the definition of a Local Business to be eligible for the preference described in this section.

b. Purchases of Non-Professional Services using Competitive Sealed Bids.

i. Non-professional services contracts (other than construction contracts) of Fifty Thousand Dollars ($50,000.00) to under Five Hundred Thousand Dollars ($500,000.00).

1. In procuring non-professional services, excluding construction services, if the Port Authority receives one or more bids from Local Businesses and if the lowest bid by a Local Business is within five percent (5%) of the lowest bid price received by the Port Authority from a bidder who is not a Local Business, the Port Authority shall award a contract that requires an expenditure of Fifty Thousand Dollars ($50,000.00) to under Five Hundred Thousand Dollars ($500,000.00) to the Local Business.

ii. Construction services contracts of Fifty Thousand Dollars ($50,000.00) to under One Hundred Thousand Dollars ($100,000.00).

1. In procuring non-professional construction services, if the Port Authority receives one or more bids from Local Businesses and if the lowest bid by a Local Business is within five percent (5%) of the lowest bid price received by the Port Authority from a bidder who is not a Local Business, the Port Authority shall award a contract that requires an expenditure of Fifty Thousand Dollars ($50,000.00) to under One Hundred Thousand Dollars ($100,000.00) to the Local Business.

iii. When a bidder is a joint venture, each joint venture partner must meet the definition of a Local Business to be eligible for the preferences described in this section.

c. Purchases of Professional Services using Request for Qualifications.

i. In procuring professional services under the Professional Services Procurement Act, Government Code § 2254.004, the evaluation committee shall award ten (10) points (out of one-hundred (100) total points) to a respondent that is a Local Business based upon knowledge of, and experience regarding, local conditions.

d. Purchases Awarded Based on "Best Value" Evaluation.

i. In procuring personal property or services (professional, non-professional, or construction services) using a "best value" procurement method, the specifications or solicitation documents must specify the relative importance of price and all other evaluation criteria. The published evaluation criteria shall include a "Local Preference" category awarding five (5) points (out of one-hundred (100) total points) to respondents that are Local Businesses and an additional five (5) points (out of one-hundred (100) total points) to respondents that are headquartered in the Local Area.

ii. "Best value" procurement methods include:

1. Solicitation of "Request for Proposals" for items other than construction services.

2. Solicitation of "Competitive Sealed Proposals," for construction, repair, rehabilitation, or alteration of facilities, and for non-construction items.

3. Solicitation of "Design-Build," for project delivery with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

4. Solicitation of "Construction Manager-at-Risk," or "Construction Manager-Agent" by which the Port Authority contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

5. Solicitation of "Job Order Contracts" or "JOC" for the construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature, but the delivery times are indefinite and indefinite quantities.

e. For respondents submitting responses as a joint venture to a Request for Qualifications or a solicitation using a "Best Value" procurement method, the following is applicable:

i. To be considered for Local Preference points, at least one of the entities must be a Local Business; and

ii. Allocation of points for joint ventures shall be determined by the percentage of ownership by a Local Business(es).

F. Program Exclusions.

a. The Program does not apply to:

i. Sole-source contracts;

ii. Contracts for the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

iii. Contracts in which the federal government participates in the form of a grant or loan, or the Port Authority acts as a conduit for federal money;

iv. Contracts with other governmental entities;

v. Contracts for which participation in the Program is otherwise prohibited by applicable law or exempted by the Port Commission; or

vi. Contracts which the Procurement Department has determined would unduly interfere with contract needs, as set forth in writing and approved by the Chief Executive Officer.

G. Reporting.

The Port Authority's Director of Procurement Services shall provide an annual report to the Port Authority's Audit Committee regarding Local Preference program activities and results.

H. Program Responsibilities.

The Procurement Department is responsible for the Program's implementation, except as otherwise expressly provided herein, including but not limited to the following activities:

a. Program management, including evaluation of Program activities.

b. Determining, for applicable procurements, whether Local Business status is appropriate as a selection criterion.

c. Reviewing vendor information and determining whether vendors meet Program requirements.

d. Acting as the primary point of control and coordination for Program data collection and reporting.

e. Providing training on the Local Preference Program, as needed.

I. Miscellaneous.

a. This Program does not constrain the discretion of the Port Commission, which may amend this Program at any time for any reason.

b. This Program supersedes and replaces any prior programs and policies adopted by the Port Commission regarding Local Preference.

c. This Program is a nonbinding statement of intent, which does not create a property interest in any person, does not constitute a contractual obligation of the Port Authority to others, and does not waive any of the Port Authority's immunities under law, including the Port Authority's immunity from suit and its immunity from liability. Nothing in this Program prohibits the Port Authority from rejecting any and/or all offers received in response to a procurement solicitation. The Port

Authority reserves the right to assert every defense to any claim that is available to it under law.

J. Effective Date.

This Program shall apply to procurement solicitations published on or after the date of adoption noted below.

Original Local Preference Program approved by Port Commission – January 19, 2021
First Amended Local Preference Program approved by the Port Commission – December 10, 2024