



**RESOLUTION NO. 20180925-15**

**AUTHORIZING EXECUTION OF A CONSULTING AND MARKETING SERVICES AGREEMENT WITH POINT TRADE SERVICES, INC.**

**WHEREAS**, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

**WHEREAS**, Businesses that engage in international business tend to have a more sustainable business model; and

**WHEREAS**, TexAmericas Center has an interest in creating and retaining quality jobs throughout the Texarkana metropolitan statistical area; and

**WHEREAS**, Point Trade Services, Inc. has proposed a Consulting Services Agreement to provide consulting activities with regards to Foreign Trade Zone #258 upon the terms as set forth in that certain agreement attached hereto; and

**WHEREAS**, the Board of Directors of TexAmericas Center has determined that it is in the best interest of TexAmericas Center and the citizens of Bowie County, Texas to enter into such agreement to retain and attract additional businesses to the TexAmericas Center properties;

**NOW, THEREFORE, BE IT RESOLVED**, that Scott Norton, Executive Director/CEO of TexAmericas Center shall be and he is hereby authorized to enter into an agreement with Point Trade Services, Inc. upon the terms substantially as set forth in the attached Consulting & Marketing Services proposal.

**PASSED and APPROVED** this 25<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Boyd Sartin, Chairman of the Board

**ATTEST:**

  
\_\_\_\_\_  
Ben King, Secretary

**ATTACHMENT:** Contract For Service FY19



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**August 30, 2018**

**Proprietary and Confidential**

Eric Voyles  
EVP/CEDO TAC  
TexAmericas Center  
107 Chapel Lane  
New Boston, TX 75570

**RE: Foreign-Trade Zone & Strategic Marketing Plan Consulting Services 2018-2019**

Dear Mr. Voyles,

PointTrade Services, Inc. ("PTSI") is pleased to submit this letter to provide the TexAmericas Center ("TexAmericas") with FTZ consulting services for the period of October 1, 2018 through September 30, 2019. The purpose of this letter is to describe our relevant service offerings and to define the scope of services to address TexAmericas' FTZ needs.

### **Our Understanding**

We understand the TexAmericas Center is interested in PTSI providing FTZ consulting services related to evaluating potential Foreign-Trade Zone opportunities in the area, strategic marketing and economic development planning, application services to assist in reorganizing FTZ # 258 under the Alternative Site Framework (ASF) as well as other related services as agreed upon by the TexAmericas Center and PTSI.

### **Scope of Services**

PTSI consulting services may include, but are not limited to:

- **Grantee Business Model Review and Recommendations:**
  - Working with TexAmericas, review current FTZ #258 FTZ Grantee business practices as well as assist in developing a FTZ Grantee business model which may include recommended strategies in areas such as: Recommended best practices for FTZ grantee administration, recordkeeping, FTZ Grantee/Operator policies, FTZ marketing and outreach strategies, suggested fee structures, FTZ Grantee fee pricing support, budget planning, compliance with FTZ Board regulations concerning grantees, FTZ Board reporting requirements for grantees, and other recommendations based on PTSI's experience regarding FTZ Grantee best practices.

- **Grantee Documentation Review and Development:**
  - Review and update FTZ Grantee documentation and records. Areas of review may include: Compliance with FTZ Board regulations, compliance with U.S. Customs and Border Protection regulations, review documentation for missing, superfluous, incomplete, or outdated content, review and recommendations related to PTSI's experience with the FTZ program and FTZ Grantee best practices. Documents to be reviewed may include: FTZ Grantee zone schedule/tariff, FTZ Grantee Procedures Manual (if applicable), Grantee/Operator/User agreement(s), FTZ site records and site record maintenance procedures, and grantee site maps.
  
- **General FTZ Grantee Consulting Services:**
  - General FTZ Grantee Consulting Services as agreed upon by PTSI and TexAmericas, including but not necessarily limited to: Assistance with economic development marketing and business development strategies; Assistance with identifying targeted industries for the local area; Evaluation of FTZ feasibility for existing structures on vacant zone sites
  
- **On-Site Meetings:**
  - On-site meetings at the Grantee's request: Meetings with companies and developers at the grantee's request; Educational presentations on FTZs as coordinated by Grantee and PTSI

### **Our Professional Fees**

The fees for the following FTZ consulting services will be billed at a blended hourly rate of \$200.00 per hour (or daily rate of \$2,400) with an applicable not to exceed amount as listed in each category below:

1. **Grantee Business Model Review and Recommendations** as described in the Scope of Services
  
2. **Grantee Documentation Review And Development** as described in the Scope of Services
  
3. **General FTZ Grantee Consulting Services** as described in the Scope of Services
  - Items 1, 2, & 3 will be billed hourly, as described above, not to exceed \$25,000 annually, (plus out of pocket expenses)



**Lapse Clause** – Should client terminate work during the project or lapse activity for a period of sixty (60) days, the project may be terminated and the balance due for all work previously performed and reasonable expenses incurred shall become payable within thirty (30) days.

**Engagement Acceptance**

The attached Standard Terms and Conditions and Mutual Non-Disclosure Agreement are incorporated by this reference into the agreement.

**Clarification Regarding Grantee Key Functions**

This engagement shall not be considered an agreement to perform key functions for the Grantee as defined by FTZ Board regulations found in 15 CFR 400.43(d)(1), summarized as: actions or recommendations related to the disposition of requests for FTZ authority or activity, approving or being a party to a participant's agreement with the Grantee, overseeing participant's operations on behalf of the Grantee.

To confirm acceptance of this agreement, please sign and return this letter via email at [eberry@pointradeservices.com](mailto:eberry@pointradeservices.com) or via fax to 850-747-1552. If you have any questions or wish to discuss any aspect of this agreement, please call me at 850-522-4108.

Very truly yours,



Eric B. Berry, LCB, CCS, AZS  
Director, Trade Services

Accepted by and on behalf of TexAmericas Center

By:   
Signature

Name: SCOTT Norton

Title: Executive Director/CEO

Date: 9/25/18

The effective date of this agreement will be October 1, 2018 through September 30, 2019.

**PointTrade Services, Inc.**  
**Standard Terms and Conditions Consulting Engagements**  
**TexAmericas Center 10/1/2018 – 9/30/19**

**1. Term of Engagement:** The engagement will become effective on the date of receipt by PointTrade Services, Inc. (hereinafter referred to as PTSI) of the engagement letter signed by the Client. Unless terminated earlier in accordance with the below terms, this engagement shall terminate upon completion of PTSI's services for the project(s) outlined in the engagement letter.

The engagement may be terminated by either party with 30 days written notice to the other party. If at any time during this engagement, Client decides not to continue with the engagement, Client may notify PTSI to that effect with 30 days written notice. In the event of this agreement being terminated and without prejudice to any other remedy available to PTSI, the Client shall immediately pay to PTSI any sums due for services previously rendered and reasonable expenses incurred.

Lapse Clause - Should Client lapse activity on the engagement project for a period of 60 days, this agreement may be terminated by PTSI. Upon declaring the agreement terminated, PTSI shall invoice Client for all goods delivered, services rendered and expenses incurred prior to the termination date. Such invoice shall be due and payable within thirty (30) days of the date it was issued.

**2. Scope of Services:** PTSI will be bound only for the scope of services specified in the engagement letter signed by the Client and the terms contained in this document. Should PTSI encounter additional issues or matters that are beyond the scope of this engagement as specified in the engagement letter signed by the Client, PTSI will notify Client of such matters as they arise and will not incur additional expenses without Client's prior written consent.

**3. Payment for Services:** Fees and expenses will be billed on a monthly basis. Out-of-pocket expenses are in addition to the professional fees. Reasonable out-of-pocket expenses include, but are not limited to, those expenses incurred for travel, (including transportation, hotel, meals, etc.), private courier services, binding, web and teleconference meetings, and certain duplication charges. Reasonable expenses are defined as coach class airfare, mid-grade hotel, etc. Before incurring any unusual expenses, PTSI will seek approval from the appropriate Client personnel.

Client agrees to pay all invoices to PTSI within 30 days of the invoice date, unless otherwise stated on the invoice. In the event Client fails to pay any invoice

when due, in addition to any other right reserved hereunder, PTSI reserves the right to suspend or limit performance until all past due sums are paid. Further, PTSI reserves the right to charge interest at the rate of one percent (1%) above the prime rate as published in the Wall Street Journal of the first day of July of the preceding fiscal year in with the default of payment occurs, per month on any unpaid balance owing by client from the date due until the date paid.

Any estimate of fees or the time likely to be involved will be given in good faith for planning or other purposes only and will not be contractually binding.

**4. Third Party Fees:** Any fees from a third party, including but not limited to government agency fees, grantee fees, support fees from a software provider, systems costs, or other charges by third parties used on behalf of Client for this engagement are not covered by this agreement and are to be paid by the Client.

**5. Information and Support:** PTSI will not be liable for any loss or damage arising from reliance placed on any information given by the Client, or from the Client's failure to give any relevant information. The Client agrees to cooperate with PTSI in the performance of PTSI's services and to give such support, facilities and information as may be reasonably required, including but not limited to, providing PTSI with timely accessibility to data, information and personnel of Client. PTSI will rely on data, facts, and suppositions provided by the Client and will not independently verify this information. Inaccurate or incomplete information provided by the Client could have a material effect on PTSI's conclusions related to the engagement services. Client shall be responsible for the performance of its employees and agents and for the correctness and completeness of all data and information provided to PTSI for purposes of the performance of PTSI's services.

In provision of its services, PTSI may consider the applicable provisions of the U.S. Customs Regulations, Code of Federal Regulations, as amended, and relevant state statutes and regulations, and judicial and administrative interpretations thereof. These authorities are subject to change and any such changes could affect the validity of PTSI's conclusions. PTSI will not update its advice for subsequent changes or modifications to the law and regulations, or to the judicial and administrative interpretations thereof, unless Client separately engages PTSI to do so after such changes or modifications.

**PointTrade Services, Inc.**  
**Standard Terms and Conditions Consulting Engagements**  
**TexAmericas Center 10/1/2018 – 9/30/19**

**6. Acting for other Clients:** PTSI will not be prevented or restricted by any item contained in the engagement from acting for other clients, unless otherwise agreed with the Client.

**7. Constraint on Use:** Any advice, written or otherwise, provided by PTSI to Client is for the information and use of Client only and may not be relied upon by any third party without the express written permission of PTSI.

**8. Confidential Information:** PTSI will keep confidential any information obtained from the Client, except insofar as PTSI is required by law or other relevant process to disclose details of the Client's dealing with PTSI. This does not apply to documents or information which PTSI obtains or develops independently of any work done for the Client or which are in the public domain.

**9. Limitation of Liability and Indemnity:** PTSI's maximum liability to Client arising for any reason relating to services rendered under this engagement shall be limited to the fees paid for these services for the term of this Agreement, 10/1/2017 to 9/30/2018.

**10. Legal Representative:** Client should confer with a legal representative to obtain counsel on the legal aspects of matters on which PTSI provides services. A legal representative should be sought for drafting any legal document and/or agreements that may be required in connection with the engagement. PTSI will provide Client's legal representative with non-legal advice that is deemed necessary by Client's legal representative to draft such documents and/or agreements. Client is responsible for payment of services as provided for under Item 4 – Third Party Fees.

**11. Independent Contractor:** This Agreement shall not render either party as an employee, partner, or joint venturer with the other party for any purpose. It is understood and agreed that each of the parties hereto is an independent contractor. Neither party shall act or represent itself, directly or by implication, as an agent of the other.

**12. Recruitment of PTSI's Staff:** The Client undertakes that it (including for this purpose any subsidiary or associated company) or any person connected with it will not directly or indirectly recruit as an employee or engage as an independent contractor

any person employed by PTSI for a period of one year after PTSI last provided services to the Client.

**13. PTSI's Outputs, Materials, and Information:** All intellectual property rights including copyright which are capable of existing in any documents, computer software, or information or (without limit) other materials created or provided pursuant to this contract by PTSI shall be and remain PTSI's property. The Client undertakes to keep all materials, documents, and information provided to it by PTSI confidential to itself and its employees and to not distribute any product of the services provided hereunder to any third party without PTSI's prior written consent.

The Client and PTSI undertake with each other during the course of this contract to not infringe the intellectual property rights of any third party.

**14. Complete Agreement:** The engagement letter signed by the Client and these terms and conditions, along with any exhibits, appendices, addendums, and schedules, encompass the entire agreement of the parties, and shall apply to the exclusion of all other terms and conditions and constitute the entire agreement between PTSI and Client and supersede all other oral and written representation, understandings or agreements relating to the subject engagement.

**15. Warranty:** Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.

**16. Force Majeure:** Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation, or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this agreement impossible, whereupon all money accrued due under this agreement shall be paid.

**17. Governing Law:** The engagement letter signed by the Client and these terms and conditions, along with any exhibits, appendices, addendums, and schedules, shall be governed by and construed in accordance with the laws of the State of Texas with exclusive jurisdiction in the State of Texas in the event of any dispute.

Client agrees to pay in full any collection or attorney fees plus costs of court should a collector or attorney be required to be used by PTSI to collect funds past due under this agreement.

### Mutual Non-Disclosure Agreement

Each undersigned party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (including, without limitation, computer programs, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which to the extent previously, presently, or subsequently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

Notwithstanding the foregoing, nothing will be considered "Proprietary Information" of the Disclosing Party unless either (1) it is first disclosed in tangible form and is conspicuously marked "Confidential," "Proprietary" or the like or (2) it is first disclosed in nontangible form and orally identified as confidential at the time of disclosure and is summarized in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure.

In consideration of the parties' discussions and any access the Receiving Party may have to Proprietary Information of the Disclosing Party, the Receiving Party hereby agrees as follows:

1. Use of Proprietary Information. The Receiving Party agrees:
  - a. to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials),
  - b. to not divulge any such Proprietary Information or any information derived therefrom to any third person (except consultants, subject to the conditions stated below,
  - c. not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally whether to enter into the currently contemplated agreement with the Disclosing Party; and
  - d. not to copy or reverse engineer any such Proprietary Information.
  - e. not to, without the prior written consent of the Disclosing Party, utilize any Proprietary and Confidential information to circumvent or compete with the Disclosing Party.



Any employee or consultant given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing. Without granting any right or license, the Disclosing Party agrees that the foregoing clauses 1a, 1b, 1c and 1d shall not apply to any information that the Receiving Party can document (1) is (or through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or (2) was in its possession or known by it prior to receipt from the Disclosing Party, or (3) was rightfully disclosed to it by a third party without restriction, provided the Receiving Party complies with any restrictions imposed by the third party, or (4) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such information. The Receiving Party may make disclosures required by court order, provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding.

2. Return of Proprietary Information. Immediately upon (i) the decision by either party not to enter into the agreement contemplated by paragraph 1, or (ii) a request by the Disclosing Party at any time (which will be effective if actually received or three days after mailed first class postage prepaid to the Receiving Party), the Receiving Party will turn over to the Disclosing Party all Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.

3. Disclosure. Except to the extent required by law, neither party shall disclose the existence or subject matter of the negotiations or business relationship contemplated between the parties.

4. Miscellaneous. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law and to be indemnified by the Receiving Party from any loss or harm, including, without limitation, attorneys' fees, in connection with any breach or enforcement of the Receiving Party's obligations hereunder or the unauthorized use or release of any such Proprietary Information. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement shall be governed by the law of the State of Florida without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior discussions and writing and constitutes the entire agreement between the parties with respect to the subject matter hereof. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees. No waiver or modification of this

Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

5. Open Records Act. Each of the undersigned parties understand and Acknowledge that notwithstanding the terms of this Agreement, the Letter Agreement for consulting services is by and between the parties, this Mutual Non-Disclosure Agreement, and the Standard Conditions to the Consulting Services Agreement are public information under the Texas Open Records Act once the Board of Directors of TexAmericas Center approves the same. Further, notwithstanding the terms of this Agreement, TexAmericas Center will comply with the terms and Provisions of the Texas Open Records Act with regard to information which it is required to provide to the public under said Act, but in doing so, will to the extent provided by law protect the Proprietary Information.

In witness whereof, the parties have executed this Agreement as of the 1 day of October, 2014.

Company Name: PointTrade Services, Inc.

Signature: \_\_\_\_\_

By: Tommy L. Berry

Title: President & CEO

Company Name: TexAmericas Center

Signature: \_\_\_\_\_

By: Scott Norton

Title: Executive Director/CEO