

FINANCE DEPARTMENT  
Certificate of Exemption Form

AVIATION

Date: 01/09/2018

Originating Department: Customer Experience

The City is authorized under limited conditions to make procurements outside of the competitive solicitation process. Chapter 252 of the Local Government Code provides guidance regarding sixteen general exemptions from the competitive solicitation. Please select one exemption.

- a procurement made because of a public calamity that requires funds to relieve the needs of the residents or to preserve city property
- a procurement to preserve or protect the public health or safety of the city's residents
- a procurement necessary because of unforeseen damage to machinery, equipment or other property
- a procurement for personal, professional or planning services
- a procurement for work that is performed and paid for by the day as the work progresses
- a purchase of land or right-of-way
- a procurement of items available from only one source
- a purchase of rare books, papers and other materials for a public library
- paving, drainage, street widening and other public improvements or related matter where at least one-third of the costs are paid by special assessments
- a public improvement project which has been authorized but for which there is deficiency of funds to complete in accordance with the plans as authorized
- a payment under a contract by which a developer participates in the construction of a public improvement as provided by subchap. c, ch 212.
- personal property sold
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices

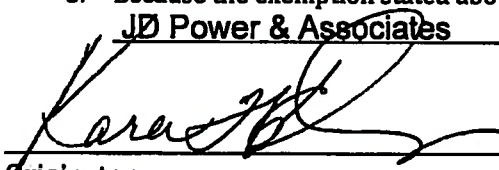
This Certificate of Exemption is executed and filed with the Finance Department as follows:

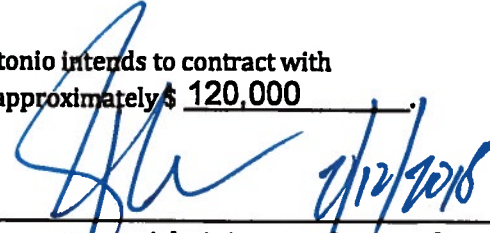
1. The undersigned is authorized to approve an exemption.
2. An exemption according to Section 252.022 of the Local Government Code exists. More specifically, the following event has occurred:

San Antonio International Airport is pursuing an agreement with JD Power as benchmark customer experience data provider. JD Power gathers samples through panel suppliers developing ratings determined through comprehensive statistical index modeling considering the relative contribution of various critical touchpoints in the customer experience vs. a single outcome rating. Data that is collected will be utilized by San Antonio International Airport to make strategic resource allocation decisions for airport projects to improve the overall customer experience for our passengers.

3. Because the exemption stated above exists, the City of San Antonio intends to contract with JD Power & Associates which will cost approximately \$ 120,000.

KR  
1/25/18

  
Originator

  
Procurement Administrator Approval

  
Department Director Approval

City Manager  
(approval required only for ratification by City Council)

COUNCIL ACTION REQUIRED  
Revised 3/12/2014

Tracking Number: F4180131  
(For Finance Use Only)

**J.D. Power**  
**Purchase of Services and License Agreement**

This Purchase of Services and License Agreement ("PSLA") is entered into as of October 25<sup>th</sup>, 2017 ("Effective Date") by and between J.D. Power, a Delaware corporation, with its principal place of business at 3200 Park Center Drive, 13<sup>th</sup> Floor, Costa Mesa, CA 92626 ("JDP"), and San Antonio Airport, a corporation in Texas, with its principal place of business at 9800 Airport Blvd, San Antonio, TX 78216 ("Subscriber"). The controlling documents of this PSLA consist of this Purchase of Services and License Agreement, plus the following Exhibits which are attached hereto and incorporated herein by reference:

**Exhibit A: Statement of Syndicated Service Fees**

**LIQUIDATED DAMAGES**

Subscriber agrees to pay J.D. Power, as liquidated damages, \$10,000 for each instance in which any portion of the studies, reports, software or other information provided to Subscriber by J.D. Power is disclosed as part of any external advertising or other promotional campaign or communication by Subscriber or any of their employees, officers, directors, affiliates, agents or contactors. Such liquidated damages shall be in addition to all other remedies that may be available to J.D. Power for breach of this PSLA.

**1. LICENSE, OWNERSHIP AND RESTRICTIONS ON USE**

Subscriber agrees that J.D. Power is the exclusive owner of the studies, reports, data and other information provided by J.D. Power to Subscriber (collectively "Information"), the desk-top software provided by J.D. Power that allows you to view and use the Information (the "Software"), any electronic platform, including those accessed through the worldwide web, which enables Subscriber access to the Information (the "Platform"), and any other media containing the Information or the Software or the Platform, the J.D. Power service marks, including the name J.D. Power, each of the J.D. Power Medallions, and all copyrights, trademark rights and other intellectual property rights with respect to each of the foregoing. The Information is provided for Subscriber's internal use only. Subscriber shall not directly or indirectly use or display J.D. Power's name or service marks without the prior written consent of J.D. Power. Subject to any restrictions or limitations specified in Exhibit A for the Information, Subscriber is hereby granted a non-exclusive, non-transferable license to use the Information and the Software for a period of five (5) years from the access start date on Exhibit A; provided, however, that the said license for non-exclusive, non-transferable use and access to the Platform (and for any software, if accessed through the Platform) shall be in effect for only one (1) year from the date of account password activation for access to the Platform. Subscriber shall not modify, reverse engineer, decompile or disassemble any of the Software or Platform. Subscriber may access the Software from a hard disk, over a network, or by any other method it chooses, as long as it otherwise complies with the restrictions and limitations of this PSLA. Subscriber may make a reasonable number of copies of the Software subject to the limitations on use specified in this PSLA. Subscriber shall not provide access to, display, circulate or otherwise disclose any of the Information or the Software or the Platform to any person except employees or contractors of Subscriber who have agreed, for the benefit of J.D. Power, to comply with the provisions of this paragraph 1 ("Authorized Users"). Notwithstanding the foregoing, all support and maintenance by J.D. Power in connection with the Platform shall be for a period of one year from the date of activation, and, with respect to the Software, one year from the date of invoice. Subscriber shall not use any of the Information or Software except as expressly permitted by this PSLA. Subscriber shall cease using the Information and Software and at the end of the five-year period, and, with respect to the Platform, after the one-year period, as applicable, for which it is licensed and, upon the written request of J.D. Power, shall destroy or return to J.D. Power all copies of the Information and Software. Subscriber acknowledges and agrees that the Information is disclosed to Subscriber in confidence, portions of which are protectable as a trade secret of J.D. Power.

**2. CHARGES**

Subscriber shall pay the subscription fees for the Information, Software and Platform and the fees for all other services ordered from J.D. Power (collectively, the "Services"). Consulting support for the Services is limited to the amount specified by the specifications for such Services; additional charges apply for additional support.

**3. DISCLAIMER OF WARRANTY**

Although J.D. Power shall use all reasonable efforts to provide accurate and reliable Services under this PSLA, neither J.D. Power nor any of its licensors of Information or Software or Platform included in the Services warrants the adequacy or accuracy thereof. **J.D. POWER AND ITS LICENSORS PROVIDE THE SERVICES AS IS AND HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE SERVICES OR THE RESULTS TO BE OBTAINED FROM THE USE THEREOF, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

**4. INFRINGEMENT; INDEMNITY**

J.D. Power shall indemnify Subscriber with respect to all losses or damages incurred by Subscriber, including reasonable attorney's fees, as a result of any claim against Subscriber that the Services furnished by J.D. Power and used by Subscriber as provided by this PSLA infringe any copyright or other proprietary rights of a third party, provided that J.D. Power is given prompt written notice thereof and has sole control of the defense and settlement of such claim. In the event of such claim, J.D. Power shall have the right to terminate this PSLA with respect to the allegedly infringing Services by giving written notice to Subscriber and by refunding to Subscriber the prorata share of any prepaid charges relating to such infringing Services. Subscriber shall indemnify J.D. Power with respect to all losses or damages incurred by J.D. Power, including reasonable attorney's fees, as a result of any claim arising out of Subscriber's use of the Services furnished by J.D. Power, provided that Subscriber is given prompt written notice thereof and has sole control of the defense and settlement of such claim.

**5. LIMITATION OF LIABILITY**

J.D. Power shall have no liability to Subscriber for any damages resulting from any interruptions, delays, inadequacies, errors or omissions relating to the Services or from the loss of Subscriber data or otherwise. **IN NO EVENT SHALL J.D. POWER HAVE ANY LIABILITY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, FOR**

**LOST PROFITS OR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF J.D. POWER, EVEN IF J.D. POWER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, J.D. POWER'S MAXIMUM LIABILITY TO SUBSCRIBER FOR ANY DAMAGES WITH RESPECT TO THE SERVICES OR UNDER THIS PSLA SHALL NOT EXCEED THE AGGREGATE TOTAL FEES PAID BY SUBSCRIBER TO J.D. POWER UNDER THE INVOICE FOR THE SERVICES.**

**6. INJUNCTIVE RELIEF**

Subscriber acknowledges that J.D. Power cannot be adequately compensated in money damages for the consequences of a breach hereof, and agrees that J.D. Power, in addition to its other remedies hereunder in the event of any disclosure in violation of Section 1 hereof, shall be entitled to an order enjoining any further breach hereof.

**7. OTHER MATTERS**

(a) Amendment. No waiver, alteration or amendment of any provision of this PSLA or any J.D. Power price quoted for the Services shall be effective unless agreed in writing by an authorized representative of both parties.

(b) Governing Law. This PSLA shall be governed by and interpreted in accordance with the laws of the State of California, without regard to the conflicts of law rules of such state. Any dispute that arises under or relates to this PSLA (whether in contract, tort or both) commenced by either party shall be resolved in state or federal court in Orange County, California, and the parties expressly waive any right they may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

(c) Assignment. Neither this PSLA nor any of the Information may be assigned or otherwise transferred by Subscriber, in whole or in part, without the prior written consent of J.D. Power. J.D. Power may assign this PSLA, in whole or in part, to any affiliate or to any successor by acquisition or merger of J.D. Power or the business operations to which this PSLA relates. The parties' rights and obligations under this PSLA will bind and inure to the benefit of their permitted successors and assigns.

(d) Entire Agreement. This PSLA, including all exhibits, and any confidentiality or nondisclosure agreement between the parties that covers this PSLA, constitute the complete, final and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings and negotiations of the parties. The terms of any purchase order or other document issued by the Subscriber in conjunction with this PSLA shall be of no effect and shall not in any way extend or amend the terms and conditions of this PSLA unless those terms are expressly accepted in writing by both parties.

(e) Compelled Disclosure. Information may be disclosed by Subscriber solely to the extent required by subpoena, court order or other operation of law (each a "Compelled Disclosure"), provided that Subscriber has given notice to J.D. Power and has made a reasonable attempt in good faith to resist making such disclosure. If disclosure is required notwithstanding Subscriber's efforts to resist such disclosure, Subscriber shall limit the disclosure to the minimum necessary to comply with such Compelled Disclosure. (f) Survival. Sections 1, 3, 4, 5, 6 and 7 shall survive termination of this PSLA.

(g) Counterparts and Execution. This PSLA may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile, Portable Document Format (PDF), or photocopied signatures of the Parties will have the same legal validity as original signatures.

**IN WITNESS WHEREOF**, the parties have caused this PSLA to be executed by their respective duly authorized representatives as set forth below:

**Subscriber**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**J.D. Power**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**J.D. Power Purchase of Services and License Agreement—Exhibit A  
Statement of Syndicated Service Fees**

Account Name: San Antonio Airport J.D. Power Contact: Ramez Faza

This Exhibit A is governed by and made part of the J.D. Power Purchase of Services and License Agreement ("PSLA") to which this Exhibit A is attached. Any changes to this Exhibit A or the PSLA must be agreed upon in writing by both parties.

Subscriber Information		Invoice Address: Please complete if different from Subscriber Information	
Company:	San Antonio International Airport	Company:	
Name:	Karen W. Ellis	Name:	
Address:	9800 Airport Blvd,	Address:	
City, St, ZIP, Country:	San Antonio, TX 78216	City, St, ZIP, Country:	
VAT No:		VAT No:	
Email:		Email:	
Phone:	(210) 207-3822	Phone:	
Fax:		Fax:	

Subscriber agrees to purchase the following products and services from J.D. Power.

Year	Months	Study(ies) or Other Service(s)/Deliverable(s)	Access Period		Select Currency: USD	Price
			Begin Date	End Date		
2017	12	North American Airport Satisfaction Study	October 25, 2017	October 24, 2018		22,000.00
2018	12	North American Airport Satisfaction Study*	December 13, 2018	December 12, 2019		23,000.00
2019	12	North American Airport Satisfaction Study*	December 13, 2019	December 11, 2020		24,000.00
2020	12	North American Airport Satisfaction Study*	December 13, 2020	December 12, 2021		25,000.00
2021	12	North American Airport Satisfaction Study*	December 13, 2021	December 12, 2022		26,000.00
		*publish date subject to change				
<b>Total Contract Value</b>						<b>120,000.00</b>

Billing Schedule and Terms: Type an "X" in the appropriate box for one billing option only

In Full (100%) Upon Execution:  50% Upon Execution / 50% Upon Delivery:  In Full (100%) Upon Delivery:

Study or Other Service / Deliverable	Invoice Date	Invoice Amount	
Invoice full amount upon delivery			
2017 North American Airport Satisfaction Study	Upon Delivery	10/25/17	USD 22,000.00
2018 North American Airport Satisfaction Study*	Upon Delivery	12/13/18	USD 23,000.00
2019 North American Airport Satisfaction Study*	Upon Delivery	12/13/19	USD 24,000.00
2020 North American Airport Satisfaction Study*	Upon Delivery	12/13/20	USD 25,000.00
2021 North American Airport Satisfaction Study*	Upon Delivery	12/13/21	USD 26,000.00
*publish date subject to change			
<b>Total Invoice Amount</b>			<b>120,000.00</b>

Payment is due upon receipt of invoice(s). J.D. Power may charge Subscriber for any shipping costs for material supplied to Subscriber. Subscriber agrees to pay any Federal, State or Local sales, use or other taxes that may be applicable. J.D. Power reserves the right to assess a late charge at the maximum lawful annual rate not exceeding 18% on all undisputed amounts payable under this Exhibit A which Subscriber has not paid within 60 days of the date of invoice. J.D. Power also may suspend any or all Services as long as any amount owed remains unpaid.

Use of Purchase Orders: Check one option—either (a) or (b)—only and provide P.O. number if applicable

- (a) Subscriber will \_\_\_\_\_ / will not \_\_\_\_\_ issue a specific Purchase Order for the value of this Exhibit A to the PSLA.  
 (b) Subscriber will \_\_\_\_\_ include the products and services to be purchased hereunder within an existing or new blanket Purchase Order and will subsequently issue a specific P.O. or release for the value of this Exhibit A to the PSLA.  
 The specific or blanket Purchase Order number is \_\_\_\_\_

If a specific or blanket purchase order is issued, the terms and conditions contained in the PSLA, including this Exhibit A, represent the entire Agreement and supersede any terms and conditions that may be included in the Purchase Order. If a Purchase Order will not be issued, the undersigned represents that they have the authority to bind Subscriber for the full value as well as the terms and conditions of the PSLA, including this Exhibit A.

**Other Items**

J.D. Power reserves the right in its sole discretion to modify or discontinue the publication or release of any of its syndicated studies and also reserves the right to grant, or not grant, awards for any Study(ies).

Accepted by Subscriber:

Accepted by J.D. Power

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Please sign and return this form, along with a copy of any above referenced Purchase Order to Christopher Van Dusen  
 via fax 248-680-6300 or via email Christopher.VanDusen@jdp.com